

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

\_\_\_\_\_  
In the Matter of:

Carroll County, Maryland

Respondent.  
\_\_\_\_\_

**ADMINISTRATIVE ORDER  
ON CONSENT**

Docket No. CWA-03-2014-0082DN

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

**II. FINDINGS of FACT and CONCLUSIONS OF LAW**

3. Carroll County, Maryland, or "Respondent", is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).



5. Respondent's MS4 is located within the geographic boundaries of Carroll County.
6. Carroll County (the County) encompasses a total area of approximately 289,536 acres. According to the County, its population is estimated at 167,929 people.
7. Stormwater from the County drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Conewago Creek, Double Pipe Creek and the North and South Branches of the Patapsco River, in addition to numerous small tributary creeks and streams, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
10. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
12. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
13. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.





14. Respondent's MS4 serves a population of at least 100,000 people.
15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.
16. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068331 which became effective on July 14, 2005 (hereinafter the "MS4 Permit").
17. The expiration date of the MS4 Permit was July 14, 2010; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.
18. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
19. On December 1, 2002 MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial SW Permit"). The permit also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.
20. On April 26 & 27, 2012 representatives of EPA conducted an inspection of Carroll County's MS4 program implementation.
21. In May 2013, EPA issued the Carroll County Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the County's MS4 program and history, eighteen (18) observations regarding the County's MS4 Program related to the requirements of the current MS4 Permit (MD 0068331, effective July 14, 2005). The Inspection Report also included 8 attachments (exhibit log, photo log, document log, etc.).
22. The County received a copy of the Inspection Report which was sent by mail on May 20, 2013. The County prepared and submitted a response to EPA on July 3, 2013.
23. Based upon the April 26 & 27, 2012 inspection, EPA identified eight categories of violations, among the seventeen (17) observations, which it had concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories and directs the County to take the corrective action described below to comply with its current MS4 Permit (MD 0068331, effective July 14, 2005).
24. Part III.C. of the MS4 permit requires "Sources of pollutants in stormwater runoff



shall be identified and linked to specific water quality impacts on a watershed basis. This process shall be used to develop watershed restoration plans that effectively improve water quality. The following information shall be submitted in geographical information system (GIS) format with associated tables as required in Part IV. of this permit: storm drain system: major outfalls, inlets and associated drainage areas;"

25. At the time of the MS4 inspection, seven years after the permit issuance, Carroll County had still not completed mapping all of its major outfalls.

26. Part III.E.2 of the MS4 permit requires the County to maintain an acceptable erosion and sediment control program in accordance with Environment Article, Title 4, Subtitle 1 of the Annotated Code of Maryland. Title 4, Subtitle 1 requires that construction sites be inspected on average once every two weeks. This requirement is also written in Section 7.1 of the Maryland Model Erosion and Sediment Control Ordinance (MDE 2/2012) "Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on average once every two (2) weeks."

27. At the Antrim Mini-Storage site, compliance inspections occurred on January 14, 2009, February 20, 2009 and April 1, 2009. The periods between these inspections were between 26 and 46 days, well beyond the two week average.

28. Part III.E.3 of the MS4 permit requires "Carroll County maintain an inspection and enforcement program or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer that are not composed entirely of stormwater are either permitted by MDE or eliminated."

29. At the time of the MS4 inspection, Carroll County's dry weather inspections were not adequately investigating for illicit discharges by failing to examine inflow points into stormwater management structures (SWMs) for the presence of dry weather flows.

30. Part III.E.6.a of the MS4 permit requires Carroll County "Continue to publicize a compliance hotline for the reporting of suspected illicit discharges, illegal dumping and spills."

31. At the time of the MS4 inspection, Carroll County still had not developed an outreach program to inform citizens about illegal dumping and spills, or the method to report illegal dumping and spills.

32. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually."

33. At the time of the MS4 inspection, Carroll County had not developed Stormwater



Pollution Prevention Plans (SWPPPs) for two closed landfills.

34. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually." Part IV.C.2.f of the general permit requires qualified plant personnel be identified to visually inspect designated equipment and plant areas. A site inspection shall be conducted annually by such personnel to verify that the description of potential pollutant sources as required in the permit is accurate.

35. At the time of the MS4 inspection, annual stormwater inspections were not documented for the Northern Landfill.

36. Based upon the MS4 inspection, EPA has concluded that Respondent's failures to: 1) identify and map all stormwater outfalls; 2) develop and implement procedures to inspect construction sites on a bi-weekly basis and insure compliance with the E&S plans; 3) ensure that all County facilities are properly permitted and inspected for compliance with their SWPPPs; and 4) develop a hotline for residents to call in illicit discharges; violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

### **III. ORDER**

AND NOW, this 3<sup>rd</sup> day of April, 2014, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

37. Respondent shall take all actions necessary to comply with its MS4 Permit, including:

- a. Continue to add major outfalls as new structures are constructed or as unknown outfalls may be discovered through periodic watershed assessments and stream walks, until such time as a new MS4 permit is issued, and adhere to those permit conditions. Submit your plan and schedule for watershed assessments and stream walks to EPA within the effective date of this Order on Consent;
- b. Continue to use the Carroll County revised form "SWM Pond & Infiltration Maintenance Form" to screen inflow points and outfall points during tri annual inspections and/or dry weather screenings;
- c. Develop and implement a plan within 6 months of the effective date of this Order to inspect all active construction sites with E&S controls on bi-weekly basis and to pursue enforcement on active construction sites based upon set criteria. Submit



this plan to EPA for comment;

- d. Submit and certify a record confirming up to date SWPPs and current inspections for all applicable County facilities permitted for industrial stormwater within the effective date of this Order on Consent.

38. All documents required by Paragraph 37 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Peter Gold  
Enforcement Officer  
NPDES Enforcement Branch  
Mail Code (3WP42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

39. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has





jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

40. This Order does not constitute a waiver or modification of the terms or conditions of the County's MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

41. For the purposes of this proceeding, the County neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

42. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

43. By entering into this Order, the County does not admit any liability for the civil claims alleged herein.

#### **V. EFFECTIVE DATE**

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 4/3/14

Jon Capacasa  
Jon Capacasa  
Director, Water Protection Division  
U.S. EPA Region III

AGREED TO:

Date: 7 March 2014

For Carroll County:

Shirley R. Ruff  
Name

Chief of Staff  
Title

REVIEWED BY: [Signature]  
COUNTY ATTORNEY'S OFFICE FOR  
CARROLL COUNTY  
DATE 3-6-14





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Jay Sakai, Director  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

SEP 20 2012

Re: Specific Objection to Carroll County Phase I Municipal Separate Storm Sewer System  
(MS4) Permit MD0068331

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Carroll County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Carroll County. However, MDE did not incorporate EPA's comments into the initial draft of the Carroll County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Carroll County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

## I. Required Changes

### **1. Water Quality Standards**

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Carroll County permit (Enforcement and Penalties) contains general language related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the Carroll County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA’s objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

### **2. Industrial / Commercial Monitoring**

Part III.C of the draft Carroll County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of “a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)...” 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA’s objection, MDE must revise the permit in accordance with those recommendations.

## II. Recommended Change

EPA also suggests the following recommendation for inclusion in the County's permit.

### Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

## III. Anticipated Changes

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Carroll County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Carroll County, EPA hereby reserves its right to renew its objection to such a draft permit.

### 1. Chesapeake Bay TMDL

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Carroll County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Carroll County permit.

### 2. Backsliding

EPA had previously expressed a concern that the Carroll County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Carroll County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Carroll County permit.

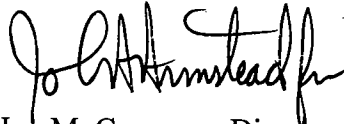
### **3. Maximum Extent Practicable**

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R §122.4(c), MDE may not issue the Carroll County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa".

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Glenn Edwards, Carroll County

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**CARROLL COUNTY  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

**FINAL  
May 2013**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**

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## EXECUTIVE SUMMARY

From April 26 through 27, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Carroll County's municipal separate storm sewer system (MS4) program in Maryland (the County, Carroll County, the Permittee).

The purpose of this inspection was to obtain information that will assist EPA in assessing Carroll County's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning Carroll County's MS4 program related to the specific Permit requirements evaluated. Table 1 below summarizes the Permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

<b>Permit Requirement</b>	<b>Observations</b>
Part III.C. – Source Identification	Observation 1. Carroll County has not completed mapping of all outfalls.
Part III.E.1. – Stormwater Management	Observation 2. Carroll County has not undertaken and documented enforcement actions for all stormwater management (SWM) facilities.
	Observation 3. Carroll County does not have a formal training program for inspectors.
Part III.E.2. – Erosion and Sediment Control	Observation 4. Carroll County has detailed and thorough documentation for erosion and sediment control and stormwater control plan review.
	Observation 5. Carroll County does not have a comprehensive database system to track construction sites and SWM facility inspections.
	Observation 6. Carroll County construction site inspectors do not inspect concrete washout areas, and were not familiar with best management practices (BMPs) for concrete washout areas.
	Observation 7. Construction site inspectors are not inspecting all construction sites every two weeks.
	Observation 8. Carroll County is not escalating enforcement against erosion and sediment control issues in a timely fashion.

**Table 1. Summary of Permit Requirements and Inspection Observations**

<b>Permit Requirement</b>	<b>Observations</b>
Part III.E.3. – Illicit Discharge Detection and Elimination	<p>Observation 9. Carroll County screens outfalls at existing SWM facilities (e.g., stormwater ponds) for dry weather flow, and therefore is not targeting high risk outfalls, such as those near commercial or industrial activities.</p> <p>Observation 10. Carroll County inspectors are not examining inflow points into SWM structures to determine if illicit discharges are occurring.</p> <p>Observation 11. Carroll County’s MS4 program does not conduct surveys at commercial or industrial facilities.</p> <p>Observation 12. Sanitary sewer overflows (SSOs) that enter the Carroll County MS4 are not being reported to the MS4 program by the Department of Public Works (DPW).</p>
Part III.E.4. – County Property Management	<p>Observation 13. Carroll County has not developed stormwater pollution prevention plans (SWPPPs) for its two closed landfills, each having a general permit.</p> <p>Observation 14. The SWPPP for the county-owned Northern Landfill has not been fully implemented.</p> <p>Observation 15. Inspections at the Carroll County Maintenance Facility are being conducted; however, a number of issues were identified which could have been corrected if more thorough inspections were being conducted.</p>
Part III.E.5. – Road Maintenance	<p>Observation 16. Carroll County is actively working on improving road maintenance activities.</p> <p>Observation 17. Excessive use of “Round-up<sup>TM</sup>” herbicide at the Carroll County Regional Airport has denuded an entire hillside, creating the potential for destabilization and soil erosion.</p>

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## INTRODUCTION

From April 26 through 27, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Carroll County's municipal separate storm sewer system (MS4) program in Maryland (the County, Carroll County, the Permittee). Discharges from the County's MS4 are regulated by National Pollution Discharge Elimination System (NPDES) Permit Number MD0068331 (the Permit), which is included in Attachment 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing Carroll County's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Attachment 2.

The EPA Inspection Team obtained its information through a series of interviews with representatives from Carroll County, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

**Carroll County:**

**Department of Land Use, Planning and Development**

Mr. Tom Devilbiss, Deputy Director

Mr. Glenn Edwards, NPDES Compliance Specialist

**Bureau of Resource Management**

Ms. Gale Engles, Bureau Chief

Mr. Martin Covington P.E., Program Engineer Stormwater Management

Mr. Myron Frock, Stormwater Review Assistant

Mr. Tim Hare, Chief Sediment Control Inspector

Mr. Paul Stoner, Environmental Inspector/Grading Reviewer

Mr. Jason Stick, Floodplain Management Specialist

**Department of Public Works**

Mr. Thomas Rio, Director

Mr. Jeffery Topper, Deputy Director

Mr. Dwight Amoss, Landfill Manager

**EPA Representatives:**

Mr. Andrew Dinsmore, EPA Region 3

Ms. Rebecca Glyn, EPA Region 9 (on detail to Region 3)

Ms. Dianne McNally, Chesapeake Bay Regional Manager

Ms. Aureana Nguyen, EPA Region 3

**Maryland MDE  
Representatives:**

Ms. Deborah Cappuccitti, Natural Resources Planner

Ms. Manu Shrivastava, Regulatory and Compliance Engineer

Ms. Maria Warburton, Natural Resources Planner

**EPA Contractors:**

Mr. Mark Briggs, ERG

Ms. Eleanor Ku Coddling, ERG

Ms. Kavya Kasturi, ERG

Ms. Daisy Wang, ERG

For a complete list of all inspection participants, please refer to the sign-in sheets in Attachment 3. After introductions, Andrew Dinsmore, EPA, presented his enforcement officer credentials to Carroll County representatives, provided business cards with his contact information, identified that Section 308 of the Clean Water Act gives EPA the authority to conduct inspections, and described the purpose of the inspection.

During the inspection, the EPA Inspection Team obtained documentation and other supporting evidence regarding compliance with the Permit. Pertinent information may have been obtained prior to, and/or after meeting with Carroll County staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation used as supporting evidence is provided in Attachment 4 and photo documentation is provided in Attachment 5. A complete list of documents obtained is provided as a Document Log in Attachment 6. Documents provided by Carroll County after the inspection are included in Attachment 7. A number of compliance assistance and/or suggestions for program improvements are provided in Attachment 8.

The report below describes and outlines the Permit requirements with the applicable permit sections cited, the related requirements and observations made during the inspection. The format of the report follows the numeric system used in the Permit. Sections of the Permit are restated with observations about those requirements listed below.

Partly cloudy weather conditions were experienced during most of the inspection activities. Weather history reports from the National Climatic Data Center for Westminster, MD indicated 0.06 inches of rainfall occurred during the inspection. In addition, weather history reports indicated approximately 1.14 inches of precipitation had fallen in the three days prior to the inspection and approximately 0.08 inches of rain had fallen in the three days following the inspection.

## **CARROLL COUNTY BACKGROUND**

Carroll County has been developing and implementing its MS4 Program since November 17, 1993. Carroll County's current NPDES permit became effective on July 14, 2005 and was to expire July 14, 2010. The Permit was administratively continued since MDE has not issued a new permit.

Carroll County encompasses approximately 289,536 acres of land, which includes 320 acres of water area<sup>1</sup>. Sixty-five percent (65%) of land use in Carroll County is agricultural. According to Carroll County's 2011 NPDES MS4 Permit Annual Report (Annual Report), the total population of Carroll County is estimated to be 167,929 people based on the County's Population estimates, dated June 31, 2011. However, the population served by the MS4 system, outside of the

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<sup>1</sup>Carroll County Department of Economic Development. *Brief Economic Facts*.  
<<http://www.carrollbiz.org/datacenter/pdf/CarrollBEF2011.pdf>>

incorporated municipalities, is 118,835. The MS4 discharges into the following watersheds: Upper Monocacy River, Lower Monocacy River, Conewago Creek, Prettyboy Reservoir, Loch Raven Reservoir, Liberty Reservoir, Double Pipe Creek, Lower North Branch Patapsco River, and South Branch Patapsco River.

The Annual Report states that currently the County has three primary personnel dedicated to compliance with the MS4 NPDES Permit, plus an additional 16 part-time staffers involved as, inspectors, planners and watershed staff. The County's SWM program is the responsibility of the Department of Land Use, Planning and Development (DLUPD). Design and review are the responsibility of the Program Engineer and Stormwater Management Review Assistant. The Environmental Inspection Division (EID) of the Bureau of Resource Management (BRM) is responsible for inspection of facilities and enforcement of all related codes. Funding for the Carroll County MS4 program is provided through the County's operating budget, and does not include a residential stormwater fee. The County's total operating expenditures for the 2010/2011 permit year was \$518,868.32. The County's total capital expenditure for the 2010/2011 permit year was \$672,476.04.

## **INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS**

### **Part III: Standard Permit Conditions**

**Part III.C. (Source Identification)** – Part III.C of the Permit requires that the permittee identify the sources of pollutants in stormwater runoff and link them to specific water quality impacts on a watershed basis. Part III.C.1 requires the permittee to map in GIS the “Storm Drain System: major outfalls, inlets and associated drainage areas;” In addition, the permittee is required to develop watershed restoration plans that effectively improve water quality. Finally, the permittee is required to store information about the County's storm drain systems, urban best management practices (BMPs), impervious surfaces, monitoring locations, and watershed restoration project descriptions and locations in a Geographic Information System (GIS) format.

Carroll County has developed an extensive GIS system that maps SWM facilities. The database stores attributes for each SWM facility, such as its drainage area, which the County computed using topographic maps. The GIS database also has the capability to link to databases with other attribute information, such as inspection dates and inspection findings. Carroll County initially focused on completing mapping for incorporated municipalities, since those are the areas of the most concentrated development and population. As of the first quarter of 2012, mapping for those incorporated areas is complete.

Observation 1: Carroll County has not completed mapping of all outfalls for the entire county. There are 814 “as-built” certified and approved stormwater facilities throughout the County. A total of 469 of 814, or 58% of the SWM facilities and drainage areas have been mapped with associated data, in various watersheds.

The County has no defined plan for locating and mapping all outlets; data is added to the map in various ways. First, according to page 3 of the Annual Report, developers are required to submit all new storm sewer systems and BMP as-built surveys in digital data showing location and

inverts for the storm drain system and drainage areas. Thus, as new growth occurs in the municipalities and new storm drain systems are added to the infrastructure, they are incorporated into the County's GIS. In addition, the County enters data for watersheds as specific studies are being performed for those areas. Finally, as BMPs and outfalls are inspected, the information is added to the GIS system. The remaining unidentified outlets that are not captured by the aforementioned methods are only discovered by chance during inspections or while driving around the County.

**Part III.E.1. (Stormwater Management)** – Part III.E. of the Permit requires the Permittee shall inspect and maintain public SWM and BMP facilities. At a minimum, the permittee will conduct preventative maintenance inspections of all SWM facilities on at least a triennial basis. Documentation of inspections, enforcement actions, and other relevant information is required to be submitted in the County's annual reports.

Observation 2: Page 38 of the Annual Report states that the County conducted 203 inspections of SWM facilities in 2011, which resulted in 65 corrective actions and 35 Notices of Violations. Each facility is required to be inspected every three years after which letters are sent to the owner indicating the condition of the facility, and the amount of time allowed for compliance to be achieved, if necessary.

However, the County has not undertaken and documented enforcement actions for all SWM facilities. For example, at the Village Gate Facility Number 4 site, inspectors noted repeated problems with trees growing on the embankment of Basin #4. This problem was noted during seven inspections conducted at the site between 2000 and 2010 (see Exhibit 1 of Attachment 4). No documentation of enforcement action is in the SWM facility inspection file. A note from the lead inspector dated March 26, 2012 states that the trees will be kept, however, no further documentation or explanation is provided.

Observation 3: Carroll County does not have a formal training program for inspectors. Currently, the County employs veteran inspectors, and relies heavily on institutional knowledge and inspector expertise. While basic inspection information is documented in the form of standard operating procedures and manuals, the documentation does not provide specific inspection procedures (see Exhibit 2 of Attachment 4). County staff stated new inspectors would receive on-the-job training, but beyond on-the-job training, the County does not have a system for capturing and conveying inspector expertise to new inspectors. Carroll County cannot guarantee effective inspections without a formal training program.

**Part III.E.2. (Erosion and Sediment Control)** – Part III.E.2 of the Permit requires that the permittee maintain an acceptable erosion and sediment control program. At a minimum, the permittee must address needed program improvements identified during MDE's evaluation of



the permittee's application for the delegation of erosion and sediment control enforcement authority. Additionally, the permittee must conduct responsible personnel certification classes to educate construction site operators regarding erosion and sediment control compliance at least twice per year, and record the activity on MDE's green card database. Finally, the permittee must report information on a quarterly basis regarding earth disturbances of one acre or more.

According to the Annual Report, MDE has delegated sediment control enforcement authority for Carroll County through June 30, 2013. EID is responsible for inspections related to building permits, grading permits, forest-harvest grading permits, NPDES storm sewer outfall and SWM facility inspections.

Observation 4: Carroll County has a detailed and extensively documented program for the review of both erosion and sediment control plans and stormwater control plans. Carroll County has developed, and continues to update, its "Supplement to the 2000 Maryland Stormwater Design Manual Volumes I & II". The document provides implementation details and design aids for specific situations that may be encountered. The applicability of the document is not limited to Carroll County; the County has made the document publicly available online and has received comments and questions from users outside of Carroll County.

Observation 5: Carroll County does not have a comprehensive database system to track construction sites and SWM facility inspections. The County largely relies on paper inspection forms and files. The County also maintains multiple independent databases, including at least two site plan review databases, a grading permit and construction site inspection database, and a SWM facility inspection tracking database. The inspection databases document that an inspection has occurred, but do not link to historic inspection records or inspector comments. The various systems employed could lead to inspection inconsistencies and tracking difficulties. For example, an inspector stated he was informed of new construction sites to inspect in three ways. Primarily, he is notified of new construction sites via a grading permit print out from the inspector supervisor once a month. Second, he is notified of new building permits as they are approved throughout the month. Lastly, he identifies construction sites that are not yet in the tracking system while driving around his region. He keeps track of these numerous changes by hand.

Observation 6: Carroll County inspectors do not inspect concrete washout areas, and were not familiar with BMPs for concrete washout areas. The EPA Inspection Team visited the Knorr Brake Corporation Westminster Technology Park, Lot 3 construction site on April 27, 2012, located at 1 Arthur Peck Drive, Westminster, MD. During the visit, the EPA Inspection Team noted the presence of an unlined concrete washout pit (see Photograph 1 in Attachment 5). The Chief Sediment Control Inspector did not visit the concrete plant on site (see Photograph 2 of Attachment 5), and stated that inspectors typically do not visit such areas. Additionally, the County's

Sediment Control and Grading Procedure Manual, used by construction site inspectors, does not discuss non-sediment pollutants.

Observation 7: According to Maryland Model Erosion and Sediment Control Model Ordinance (February 2012) and the Code of Maryland Regulations (COMAR) 26.17.1 construction sites should be inspected on average every two weeks. Construction site inspectors are not inspecting all construction sites every two weeks. Records from the Mount Airy Middle School site show that since August 2011, more than one month has elapsed between inspections on three separate occasions (see Exhibit 3 of Attachment 4). Additionally, records from Antrim Mini-Storage show that the site was inspected only twice between December 19, 2008 and April 1, 2009 (see Exhibit 4 of Attachment 4). One inspection occurred on January 14, 2009, 26 days after the last inspection. The next inspection occurred 31 days later on February 20, 2009. The next inspection occurred on April 1, 2009, 46 days later. While the site was inactive, the site was not in compliance with its approved erosion and sediment control plan. The issues were initially identified by the inspector on December 2, 2008 and were not resolved until July 8, 2009.

Observation 8: Carroll County is not escalating enforcement against erosion and sediment control issues in a timely fashion. Records from Antrim Mini-Storage show that issues identified during a December 2, 2008 inspection were not resolved until July 8, 2009 (see Exhibit 4 of Attachment 4). Carroll County repeatedly notified the site operator, but did not state that the case would be referred to the County Attorney until April 2009. The site file does not contain any documentation that the issue was referred to the attorney. The issue remained unresolved until July 8, 2009.

**Part III.E.3. (Illicit Discharge Detection and Elimination)** – Part III.E.3 of the Permit requires that the permittee maintain an inspection and enforcement program to ensure that all discharges to and from the MS4 system that are not composed entirely of stormwater are either permitted by MDE or eliminated. At a minimum, the Permittee must screen 100 outfalls a year and any outfall with a discharge must be sampled with a chemical test kit. Additionally, the Permittee must conduct routine surveys of commercial and industrial watersheds for discovering and eliminating pollutant sources. The Permittee must also maintain a program to address illegal dumping and spills, and use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills. Finally, significant discharges must be reported to MDE for enforcement, and all illicit discharge detection and elimination activities must be reported in the Annual Report.

Observation 9: Dry weather screening of outfalls is associated with existing SWM facilities (e.g., stormwater ponds) and outfalls are therefore not necessarily selected based on high-risk such as commercial or industrial activities. According to page 39 of the Annual Report, inspections throughout Carroll County are performed on a five-year rotation; however, areas such

as industrial parks and selected outfalls near the incorporated municipalities may be inspected more frequently, as would any identified problem outfall. According to Carroll County inspectors, 633 outfalls have been dry weather screened as of April 2012, however no database exists to determine if actual problem outfalls or commercial industrial areas are being targeted.

- Observation 10: Carroll County inspectors are not examining inflow points into SWM structures to determine if illicit discharges are occurring. According to the inspector, he focuses his inspections on the integrity of the overall system and pays particular attention to the outfall to determine if dry weather flow is present. The Outfall Reconnaissance Inventory Sheet (see Exhibit 5 of Attachment 4) used by the inspectors focuses on flow at the outfall from the structure and does not include questions regarding inflow to the structure. During dry weather periods, water levels in structures such as ponds may be below overflow structures at outfalls and therefore no flow may be leaving the structure, even though dry weather discharges may be entering the structure.
- Observation 11: Carroll County's MS4 program does not conduct surveys at commercial or industrial facilities. In addition, MS4 program personnel stated they are not working with other local government agencies such as the local fire departments or the Carroll County Health Department to relay information regarding potential stormwater impacts when these entities are conducting their inspections.
- Observation 12: SSOs that enter the Carroll County MS4 are not being reported to the MS4 program by the DPW. In 2011, three SSOs, having a combined total volume of nearly 280,000 gallons, were discharged to unnamed tributaries that ultimately discharged to waters of the State of Maryland (see Exhibit 6 of Attachment 4). MS4 program staff should be informed when SSOs reach their system so that follow-on response (i.e., cleanup of the sewage from the MS4) can be documented.
- Observation 14: Part III.E.6.a of the Permit requires Carroll County to "Continue to publicize a compliance hotline for the public reporting of suspected illicit discharges and, illegal dumping and spills." Carroll County has not developed an outreach program that informs citizens about illegal dumping and spills, or the method to report illegal dumping and spills.

**Part III.E.4. (County Property Management)** – Part III.E.4 of the Permit requires the permittee to identify all county-owned and municipal facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent to MDE for each. The status of pollution prevention plan development and implementation shall be submitted annually.

- Observation 14: Carroll County has not developed stormwater pollution prevention plans (SWPPPs) for its two closed landfills, each having a general permit. County personnel stated they were unsure if SWPPPs were needed at these facilities since no activity is occurring; however, upon EPA inspection of the Hodges Landfill on April 26, 2012, subsidence of the landfill cap was observed (see Photograph 3 of Attachment 5). Had a SWPPP been developed for this landfill and an inspection program implemented, landfill cap subsidence would have been documented and plans could have been developed to correct the issue.
- Observation 14: The June 2011 SWPPP prepared by URS Corporation for the County-owned Northern Landfill has not been fully implemented. The Carroll County Northern Landfill is an active landfill and, based on the information provided, appears to have a general industrial stormwater permit from MDE (see Exhibit 7 of Attachment 4), not an individual industrial stormwater permit. Neither quarterly nor annual stormwater inspections are being documented for the Northern Landfill. During a walk-through of the landfill on April 26, 2012, a number of issues were identified which could have been corrected if inspections were being conducted. For example, Pond #4, designed to collect sediment from the asphalt shingle scrap area and the transfer station area, had significant amounts of sediment, reducing its effectiveness (see Photographs 4 of Attachment 5). Oil-stained soils and oil-containing equipment were observed in the metal collection and recycling area (see Photographs 5 and 6 of Attachment 5). Discharges from this area along with other areas of the landfill first enter Pond #1 before discharging to a small stream (see Photograph 7 of Attachment 5).
- Observation 15: Inspections at the Carroll County Maintenance Facility were being conducted by County Staff. A number of issues were identified which could have been corrected if more thorough inspections were being conducted by County Staff. For example, EPA conducted a walk-through inspection of the Maintenance Facility on April 26, 2012, and found paint solids that had been dumped outside the paint storage building on to a paved and exposed area (see Photograph 8 of Attachment 5). In addition, rusted, full containers of mineral oil were placed on the gravel floor of an equipment storage barn, which allows stormwater to enter.

**Part III.E.5. (Road Maintenance)** – Part III.E.5 of the Permit requires the permittee to maintain its plan to reduce pollutants associated with road maintenance activities. At a minimum, the permittee is required to document street sweeping; inlet cleaning; reducing the use of pesticides, herbicides, fertilizers, and other pollutants associated with roadside vegetation management through the use of integrated pest management; and controlling the overuse of winter weather deicing materials through continual testing and improvement of materials, equipment calibration, employee training, and effective decision-making.

- Observation 16: Carroll County is actively working on improving road maintenance activities. For example, Carroll County has installed a zero-discharge truck wash station at the Maintenance Facility. This system recycles truck wash water through a filtration unit for reuse. Carroll County has also installed a salt recovery system at their Hodges Landfill salt barn. Salt that drops on to the concrete staging area near the salt barn can be swept into an underground vault, mixed with water, and the resulting salt brine can be applied to roadways for deicing (see Photograph 9 of Attachment 5).
- Observation 17: Excessive use of “Round-up<sup>TM</sup>” herbicide at the Carroll County Regional Airport has denuded an entire hillside, creating the potential for destabilization and soil erosion (see Photograph 10 of Attachment 5).

**Part III.F.&G. (Watershed Assessment and Planning & Watershed Restoration) -** The Permit requires Carroll County to continue its systematic assessment of water quality within its watersheds and development of watershed management plans for controlling urban stormwater runoff, improving water quality, and protecting drinking water reservoirs. Additionally, the Permit requires the implementation of watershed restoration activities identified in the watershed management plans.

- Observation 18: The County actively works on watershed restoration and impervious surface area reduction through watershed assessments, retrofitting and building new SWM facilities, tree plantings, and educating the public. In 2011, Carroll County performed Stream Corridor Assessments (SCA) on the Prettyboy watershed to assess the health of the stream systems. Carroll County ultimately evaluated 80 out of the 100 miles of stream within the watershed for impairments. Carroll County also continues to monitor the Air Business Park watershed to determine the effectiveness of SWM practices for stream channel protection. This long-term monitoring program has resulted in data that show the retrofit has significantly decreased the erosive energy of stormwater leaving the watershed.

The County completes watershed assessments and has also implemented restoration and retrofits. Since landowners own streams on their property, the county reached out to property owners to determine their interest in buffer plantings at the county’s cost. For interested parties, the County completed buffer plantings and required the landowner to maintain the buffer, providing information on how to do so. Additionally, the county identified SWM facilities with regular issues and targeted such facilities for retrofitting. In cases where the County has had to excavate to create the retrofit, such as the Parrish Park and Harvest Farms retrofit projects, Carroll County reached out to farmers with space to accept the excavated soil instead of landfilling the soil. The results benefitted both the county and the farmers by reducing disposal costs for the county and turning previously unusable property into fields for farming.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

OCT 10 2014

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Mark Belton, Administrator  
Charles County  
200 Baltimore Street  
La Plata, Maryland 20646

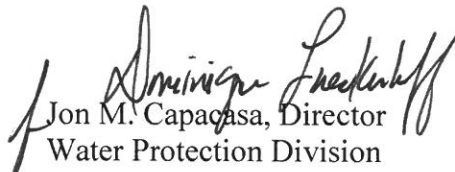
Re: Administrative Penalty Complaint and Notice of Opportunity to Request Hearing

Dear Mr. Belton:

The United States Environmental Protection Agency ("EPA") inspected Charles County's Municipal Separate Storm Sewer System (MS4) Program to assess its compliance with Maryland Department of the Environment (MDE) permit MD0068365. EPA has determined that Charles County is in violation of Federal regulations at 40 C.F.R. § 122.34 and its Permit because it failed to inspect its stormwater management facilities on a triennial basis.

Enclosed with this letter is a document entitled Administrative Penalty Complaint and Notice of Opportunity to Request Hearing issued pursuant to Section 309(a) of the Federal Clean Water Act ("Act"), 33 U.S.C. § 1319(a). This document contains findings that Charles County has violated Section 301 of the Act, 33 U.S.C. § 1311. If you require any information or assistance regarding this matter, please contact Mr. Andrew Duchovnay, Office of Regional Counsel, 215-814-2484.

Sincerely,

  
Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Peter Aluotto, Charles County



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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
	:	
Charles County, Maryland	:	Docket No. CWA-03-2015-0013
	:	
Respondent.	:	<b>ADMINISTRATIVE PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST HEARING</b>
	:	

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violated Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director ("Complainant").

2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of \$37,500 (thirty-seven thousand five hundred dollars) against Charles County ("Respondent") for violation(s) of Section 301 of the CWA, 33 U.S.C. § 1311.

**II. FACTUAL AND LEGAL ALLEGATIONS**

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National



Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

6. Charles County, Maryland is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (“MS4”) as that term is defined in 40 C.F.R. § 122.26(b)(8).

8. Respondent’s MS4 is located within the geographic boundaries of Charles County.

9. Charles County (the “County”) encompasses a total area of approximately 292,960 acres. According to the County, its population is estimated at 150,592.

10. Stormwater from the County drains to a number of water bodies, including the Mattawoman Creek, Zekiah Swamp, Port Tobacco Creek and the Potomac River, in addition to numerous small tributary creeks and streams, which are considered “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

12. “Discharge of a pollutant” includes “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2.

13. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

14. The term MS4 includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

16. Respondent’s MS4 serves a population of at least 100,000 people.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits on September 5, 1974.

18. MDE issued to Respondent an NPDES MS4 Discharge Permit (No. MD 0068365) which became effective on July 31, 2002 (hereinafter the “MS4 Permit”) and was applicable to the County development district.

19. The expiration date of the MS4 Permit was July 31, 2007; however, the MS4 Permit has been administratively extended.

20. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

21. On June 25 and 26, 2013, a compliance inspection team comprised of EPA and authorized representatives of EPA reviewed Respondent’s MS4 program (the “MS4 Inspection”).

22. In September 2013, EPA issued the Charles County Municipal Separate Storm Sewer System (MS4) Program Inspection Report (“Inspection Report”).

23. The County received a copy of the Inspection Report on October 28, 2013, and prepared and submitted a response to EPA on December 27, 2013.

24. Based upon the June 25 and 26, 2013 review and Respondent’s responses thereto, EPA identified the following violation of the MS4 Permit and Section 301 of the



Act, 33 U.S.C. § 1311.

### **III. FINDINGS OF VIOLATION**

#### **Failure to Inspect all Stormwater Management Facilities Triennially**

26. Part III.E.1 of the Permit requires the County to conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis.

27. At the time of inspection the County had failed to inspect at least 214 stormwater management facilities within its development district within the triennial period.

28. Respondent's failure to inspect all of its stormwater management facilities triennially constitutes a violation of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

### **IV. PROPOSED CIVIL PENALTY**

29. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations which are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and occur between January 12, 2009 and December 6, 2013, subject the violator to civil penalties in an amount not to exceed \$16,000 per day of each violation up to a total penalty of **\$ 177,500** per proceeding and for violations that occur after December 6, 2013, civil penalties in an amount not to exceed \$16,000 per day of each violation up to a total penalty of **\$187,500**.

30. Based on the foregoing findings of violation, and pursuant to the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Complainant hereby proposes to issue an Order Assessing Administrative Penalties to the Respondent assessing a penalty in the amount of **\$37,500**. The proposed administrative penalty has been determined in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). For purposes of determining the amount of any penalty to be assessed, EPA has taken into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. The proposed penalty does not constitute a demand as defined in 28 U.S.C. §§ 2412 *et seq.*

31. If warranted, Complainant may adjust the proposed civil penalty assessed in this Complaint. Complainant will consider Respondent's ability to pay in making any adjustments to the proposed civil penalty assessed. However, the burden of raising the

issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

## **V. SETTLEMENT CONFERENCE**

32. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the SDWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.

33. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

34. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section VI, following your receipt of this Complaint. Such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.

## **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

35. As provided in section 1319(g)(2)(B) of the Act, 33 U.S.C. § 309(g)(2)(B), the Respondent has the right to a hearing on the record regarding this Complaint to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty.

36. Hearing procedures are described in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed.

37. If the Respondent wishes to avoid being found in default, it must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within 30 (thirty) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied.



38. The Answer shall also state:

- a. the circumstances or arguments that are alleged to constitute grounds of any defense;
- b. the facts which Respondent disputes;
- c. the basis for opposing any proposed relief; and
- d. whether a hearing is requested.

Failure of respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

39. The Answer must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

40. A copy of this Answer and any subsequent documents filed in this action shall be sent to:

Mr. Andrew Duchovnay  
Senior Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Duchovnay.Andrew@epa.gov

Mr. Duchovnay may be reached by telephone at (215) 814-2484 and by facsimile at (215) 814-2603.

41. If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, a Default Order may be issued. Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. Respondent's failure to pay the entire penalty assessed by the default order by its due date will result in a civil action to collect the assessed penalty. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will herefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. Part 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. Part 13.11(b). In addition, a penalty will be assessed on any portion of the debt which remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. Part 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 4 C.F.R. Part 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.

43. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), shall affect Respondent's continuing obligation to comply with the CWA, any other Federal or State laws, and with any Compliance Order issued pursuant to Section 309(a) of the Act, 33 § 1319(a).

## **VII. QUICK RESOLUTION**

44. In accordance with 40 C.F.R. § 22.18(a) Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

45. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

46. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Mr. Andrew Duchovnay (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

47. If Respondent files such a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

48. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

49. Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of the Administrative Penalty Complaint.

a. Payment by check to "United States Treasury":

i. If sent via first-class mail, to:

US EPA Region III  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Finance Center Contacts:  
1) Jesse White: 301-887-6548  
2) John Schmid: 202-874-7026  
3) REX (Remittance Express) 866-234-5681

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and to:

Mr. Andrew Duchovnay (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

**VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

50. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the



trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: \_\_\_\_\_

\_\_\_\_\_  
Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Administrative Penalty Complaint and Notice of Opportunity to Request Hearing, to the following individual by First Class Mail, return receipt requested:

\_\_\_\_\_  
Mark Belton  
County Administrator  
Charles County Maryland  
200 Baltimore Street  
La Plata. Maryland 20646

Date: \_\_\_\_\_

\_\_\_\_\_  
Andrew Duchovnay  
Senior Assistant Regional Counsel  
US EPA Region III



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**CHARLES COUNTY  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

**September 2013**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region 3  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**

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## EXECUTIVE SUMMARY

From June 25 through 26, 2013, an EPA Inspection Team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of Charles County.

The purpose of this inspection was to obtain information that will assist EPA in assessing Charles County's compliance with the requirements of its Maryland Pollution Discharge Elimination System Permit Number MD0068365, as well as the implementation status of its current MS4 program. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

Observations	
<b>Part III.C.2: Database Identifying Major Outfalls</b>	<b>Observation 1:</b> At the time of the inspection, Charles County did not have a complete database identifying all major outfalls and stormwater system features.
<b>Part III.E: Management Programs</b>	<b>Observation 2:</b> Charles County continues to work on addressing issues identified by MDE during MDE's 2011 review of Charles County's erosion and sediment control program.
	<b>Observation 3:</b> Charles County does not appear to have begun conducting responsible personnel certification classes per MDE's program review.
<b>Part III.E.1: Stormwater Management Program</b>	<b>Observation 4:</b> At the time of the inspection, Charles County was not inspecting all of their approximately 660 stormwater management structures located on approximately 382 SWM sites within the Development District on a triennial basis.
<b>Part III.E.2: Illicit Connection Detection and Elimination</b>	<b>Observation 5:</b> It appears that Charles County is not ensuring that all non-stormwater and non-permitted discharges to the MS4 are eliminated.

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## I. INTRODUCTION

From June 25 through 26, 2013, an EPA Inspection Team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected the municipal separate storm sewer system (MS4) program of Charles County. Discharges from Charles County's MS4 are regulated by Maryland Pollution Discharge Elimination System Permit Number MD0068365 (the Permit), which is included in Appendix 1. Two representatives from the Virginia Department of Environmental Quality (DEQ) shadowed the EPA and ERG inspectors during the inspection as a training exercise for inspections that will be performed as a part of Virginia's MS4 program.

The purpose of this inspection was to obtain information that will assist EPA in assessing Charles County's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 program. The inspection schedule is presented in Appendix 2.

The EPA Inspection Team obtained its information through a series of interviews with representatives from Charles County, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

Charles County  
Representatives:

**Department of Planning and Growth Management (PGM)**

Mr. Steve Ball, Planning Director of Planning Division  
Ms. Aimee Dailey, Planner  
Mr. Chuck Donaldson, Inspector Superintendent  
Mr. Reed Faasen, Inspection & Enforcement Manager  
Mr. Glenn Gorman, GIS  
Mr. Bob Harrington, Engineer  
Mr. Eddie Henderson, Inspector  
Mr. Robert Martin, Inspector Supervisor  
Mr. Charles Rice, Program Manager  
Mr. Ray Shumaker, Inspector Superintendent  
Mr. Michael Snyder, Project Manager  
Mr. John Stevens, Chief of Capital Services  
Mr. Art Swann, Program Manager  
Mr. Frank Ward, Chief of Construction Permits and Inspection Services  
Ms. Karen Wiggen, Planner  
Mr. Paul Zielinski, Inspector

**Soil Conservation District (SCD)**

Mr. Luis Dieguez, District Manager  
Mr. John Downs, Planning Technician

**County Administrative Office (CAO)**

Mr. Matthew Clagad, Associate County Attorney

**Division of Public Works (DPW)**

Mr. Robert Curtin, Bridge Management  
Mr. Dennis Fleming, Chief of Environmental Resources  
Mr. Bill Shreve, Director of Public Works  
Mr. Steve Staples, Chief of County Roads

Mr. Olin Straus, Engineer II

Spatial Systems Associates

Representatives: Mr. Patrick McLoughlin, Consultant

Vista Design, Inc.

Representatives: Mr. Richard Polk

Garlyn Environmental  
Services, Inc.

Representatives: Mr. Gary Davis, Inspector

KCI Technologies

Representatives: Mr. Nathan Drescher, Consultant  
Mr. Mike Pieper, Environmental Scientist  
Mr. James Tomlinson, Consultant

EPA Representatives: Mr. Matt Colip, NPDES Enforcement Officer  
Ms. Kyle Zieba, NPDES Enforcement Officer

MDE:

Representatives: Ms. Debbie Cappuccitti

VA DEQ Representatives: Ms. Kelsey Brooks, MS4 Inspection & Compliance  
Mr. Derick Winn, MS4 Permit Writer

EPA Contractors: Ms. Kavya Kasturi, ERG  
Ms. Lauren Scott, ERG  
Ms. Daisy Wang, ERG  
Ms. Kathleen Wu, ERG

A complete list of inspection participants is included in Appendix 3.

During the inspection, the EPA Inspection Team obtained documentation regarding compliance with the Permit. Pertinent information may have been obtained prior, and/or after meeting with Charles County staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation is provided in Appendix 4 and photographs taken during the inspection are provided in Appendix 5. A complete list of documents obtained is provided as a Document Log in Appendix 6.

This report identifies Permit requirements with specific sections cited and observations made during the inspection. The format of this report follows the numeric system used in the Permit and is sequential. Sections of the Permit are restated with observations about those requirements listed below.

Additionally, Appendix 7 provides compliance assistance and/or suggestions for MS4 program improvement.

## **II. CHARLES COUNTY BACKGROUND**

Charles County has been developing and implementing its MS4 program since 1997. Charles County's coverage under the National Pollutant Discharge Elimination System (NPDES) permit program became effective on July 31, 2002 with an expiration date of July 31, 2007. MDE has not issued Charles County a new permit and, by default, the Permit has been administratively extended.

Charles County encompasses approximately 292,960 acres of land, and is bordered on the west and south by the Potomac River, on the north by Prince George's County, and on the east by Calvert County and Saint Mary's County. The total population of Charles County is estimated to be 150,592 people in 2012<sup>1</sup>. The population of its Metropolitan Statistical Area (MSA) of Washington-Arlington-Alexandria, DC-VA-MD-WV is estimated to be 5,582,170 in 2010<sup>2</sup>. Charles County's MS4 permit is only applicable in the Development District and does not cover the entire county (see Exhibit 1 in Appendix 4). The population in the Development District is estimated to be 90,243 people in 2010. The Development District MS4 discharges into the following receiving waters, which are each also major watersheds: Mattawoman Creek, Zekiah Swamp, Port Tobacco Creek, and the Potomac River.

Currently Charles County has approximately 40 staff including 11 inspectors to implement the MS4 program. Charles County also uses the services of contractors, including:

- Garlyn Environmental Services, Inc. and independent consultants for inspections;
- KCI Technologies for illicit discharge detection and elimination (IDDE) monitoring and outfall screening;
- Spatial Systems Associates for geographic information systems (GIS); and
- Vista Design, Inc for watershed restoration support.

Based on Charles County's 2012 NPDES Annual Report (see Exhibit 2 in Appendix 4), Charles County had an Environmental Service Fee NPDES Allocation of \$12 per improved property, which provided \$613,290 in revenue for the program in 2012. Based on Charles County's 2012 NPDES Annual Report (see Exhibit 2 in Appendix 4), Charles County had Recordation Fee of \$117 per lot, which provided \$83,187 in revenue for the program in 2012. EPA was verbally told by the county that the 2012 and 2013 fiscal year NPDES operating budgets were \$744,177 and \$1,032,300, respectively. Funding for watershed restoration projects is provided through the county's Capital Improvements Program. The county had a budget of \$442,000,000 for the 2012 fiscal year<sup>3</sup>.

## **III. INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS**

Dry weather conditions were experienced throughout most of the inspection activities. Weather history reports indicated that there was no precipitation in Charles County during the field work component of the inspection activities. In addition, the weather history reports indicated that approximately 0.17 of precipitation fell during the three day period prior to the inspection and approximately 1.07 fell during the three day period immediately following the inspection.

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<sup>1</sup> <http://quickfacts.census.gov/qfd/states/24/24017.html>.

<sup>2</sup> <http://diversitydata.sph.harvard.edu/Data/Profiles/Show.aspx?loc=1428>.

<sup>3</sup> [http://www.charlescounty.org/fs/budget/budbook/2012/001\\_Budget\\_Message.pdf](http://www.charlescounty.org/fs/budget/budbook/2012/001_Budget_Message.pdf).

### **Part III.C.2 – Database Identifying Major Outfalls**

By 7/31/2003, Charles County shall submit its database identifying major outfalls. Data shall be submitted on CD-ROM(s) and include all major outfalls, associated inlets, appurtenant conveyances, drainage areas, and private storm drain systems.

Observation 1: At the time of the inspection, Charles County did not have a complete database identifying all major outfalls and stormwater system features. The county's 2012 Annual Report stated on page 5 that "This information was included in the County's June 2002 to July 2003 annual report" (see Exhibit 3 in Appendix 4). The EPA Inspection Team was told that the county has not mapped all outfalls. Approximately 163 major outfalls have been mapped. The county considers outfalls with a diameter greater than 12 inches (industrial) and 36 inches (commercial or residential) to be "major". In addition, data from approximately 500 of 1,500 as-builts have been input into GIS so far, with the remaining 1,000 as-builts dating back to the 1980s. Additional outfalls have been discovered during outfall inspections and as-built reviews. Ms. Karen Wigger stated that the county's goal is to map all outfalls and stormwater management (SWM) structures within 5 years from present. The EPA Inspection Team was told that data from approximately 2,600-2,700 construction plans without as-builts will eventually need to be input into GIS as well.

### **Part III.E – Management Programs**

The following management programs shall be implemented within the Development District of Charles County. These programs are designed to control stormwater discharges to the maximum extent practicable and shall be maintained for the term of this permit such that they become part of the routine operation of Charles County. Charles County shall address any needed program improvements identified as a result of periodic evaluation by MDE and annual self-assessment.

Observation 2: During MDE's 2011 review of Charles County's erosion and sediment control (E&S) program, MDE identified the following recurring maintenance items (see Exhibit 4 in Appendix 4):

- Erosion repairs for swales and inflow protection; and
- Lack of stabilization of inactive areas.

MDE's review documentation stated that Charles County was able to bring all sites into compliance.

During the EPA inspection on June 25, 2013, the EPA Inspection Team visited the New High School construction site, located on Piney Church Road in Waldorf, MD and made the following observations:

- A swale leading to Basin A, an existing stormwater management wet pond located offsite, was eroded (see Photographs 1 and 2 in Appendix 5). Sediment was located on top of vegetation adjacent to the eroded

area. E&S plan sheet C-8.20 requires sod stabilization for the swale (see Exhibit 5 in Appendix 4);

- Five unstabilized, uncovered stockpiles were located on site (see Photographs 3 and 4 in Appendix 5). Erosion rills were visible on the stockpiles. Mr. Chuck Donaldson, a county E&S inspector, stated that the stockpile located on the perimeter of the site had been there since December 2012 (see Photograph 5 in Appendix 5);
- The inflow point from the eastern swale to Sediment Trap 3 had collapsed (see Photograph 6 in Appendix 5). Sediment accumulation was present in the pond and the water was turbid; and
- The southern swale to Sediment Basin 1 was eroded. Sediment accumulation was present (see Photograph 7 in Appendix 5).

The EPA Inspection Team formally requested all inspection reports and follow up documentation for the New High School construction site. No reports dated between January 3, 2013 and June 25, 2013 were received (see Observation 15 in Appendix 7). None of the items above were identified in the two inspection reports completed prior to the EPA inspection (see Exhibit 6 in Appendix 4). The items are identified in the construction punch list dated June 26, 2013 and an inspection report dated July 10, 2013 stated that all items listed above had been resolved (see Exhibit 6 in Appendix 4).

The EPA Inspection Team also visited the Fieldside Parcels C & E construction site, located on Piney Church Road in Waldorf, MD on June 25, 2013. The EPA Inspection Team observed the following:

- Sediment accumulation was present on the riprap and in the eastern swale leading to Sediment Trap 1 (see Photograph 8 in Appendix 5).
- Matting was not attached to the slopes of the western swale leading to Sediment Trap 1 and erosion was visible (see Photograph 9 in Appendix 5).
- A swale leading toward the northern edge of the site was not stabilized and erosion rills were visible (see Photographs 10 and 11 in Appendix 5). Straw was visible along the sides of the eroded area. Riprap was full of sediment and displaced (see Photograph 12 in Appendix 5). Sediment was present outside of the silt fence near the bottom of the swale (see Photograph 13 in Appendix 5). Mr. Eddie Henderson, one of the Charles County inspectors for the site, stated that stabilization of the swale had been a recurring issue and that approximately two weeks prior to the EPA inspection; the site had been asked to perform a soil analysis to determine why the area was not remaining stabilized. After the EPA inspection, Charles County provided the soils analysis, dated

June 25, 2013, and the site's consulting engineer's recommended treatment plan, dated July 23, 2013 (see Exhibit 7 in Appendix 4).

- A swale leading from the building areas to Existing Sediment Basin 2/Pond 5 was not stabilized and erosion was visible (see Photographs 14 and 15 in Appendix 5). Additionally, the area around the swale was not stabilized and erosion rills were visible.

The EPA Inspection Team formally requested all inspection reports and follow up documentation for the Fieldside Parcels C & E construction site. The county provided inspection reports and follow up documentation dated March 22, 2013 through July 1, 2013 (see Exhibit 8 in Appendix 4). A construction punch list dated April 5, 2013 required reinstallation of the matting on the temporary swales by April 9, 2013. An inspection report dated April 10, 2013 stated that the side slopes of the temporary swale had not yet been stabilized and an inspection report dated April 12, 2013 does not comment on the stabilization status of the temporary swales. An additional construction punch list dated April 25, 2013 identified that stabilization and erosion repair of the temporary swales, as well as restabilization of the temporary swales was required. The April 25, 2013 punch list stated that no work other than sediment and erosion control was to take place until all items were complete and a passing re-inspection takes place. Charles County did not provide any documentation demonstrating that the items on the April 25, 2013 punch list were completed. After the inspection conducted with the EPA inspection team, a construction punch list dated June 27, 2013 was issued that required cleaning and stabilization of the swales and stabilization of inactive areas by July 5, 2013. An inspection report dated July 1, 2013 stated that all work beside stabilization was complete. Additionally a stop work order and new construction punch list requiring stabilization was issued on July 1, 2013.

Observation 3: In MDE's review of Charles County's 2011 Annual Report, MDE stated that Charles County should consider performing their own responsible personnel certification classes (see Exhibit 9 in Appendix 4). At the time of the EPA inspection, Charles County stated that they were not currently performing their own responsible personnel certification classes.

### **Part III.E.1 – Stormwater Management Program**

Charles County shall maintain an acceptable stormwater management program in accordance with the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland. At a minimum, Charles County shall complete the following:

- a. Conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis. Documentation identifying the facilities inspected, the number of maintenance inspections, follow-up inspections, and enforcement action(s) used to facilitate inspection order compliance, maintenance inspection schedules, and any other relevant information shall be submitted in the county's annual reports;

- b. Implement the stormwater management design policies, principles, methods, and practices found in the *2000 Maryland Stormwater Design Manual* and COMAR;
- c. Track the progress toward satisfying Part III.E.1.b. above; and
- d. Report annually the modifications needed to address problems associated with implementing the *2000 Maryland Stormwater Design Manual* in Charles County.

Observation 4: At the time of the inspection, Charles County was not inspecting all of their approximately 660 SWM structures located on approximately 382 sites within the Development District on a triennial basis. The “Urban Best Management Practice (BMP)” tracking sheet provided by the county indicates that a total of 660 SWM structures are located inside the Development District (see Exhibit 10 in Appendix 4). Of these 660 structures, 29 do not appear on the “SWM BMP Inspections” spreadsheet, which schedules and tracks all of the inspections conducted by the county since approximately January 1991 (see Exhibit 11 in Appendix 4).

The county has a backlog of approximately 112 SWM facilities in the Development District that were scheduled for inspection before May 2010 but have not yet been inspected. These 112 SWM structures are two or more three-year inspection cycles behind schedule. Of the 112 SWM structures, 82 are privately owned and maintained, while 30 are publicly owned and maintained by Charles County, the Charles County Board of Education, or the Charles County Volunteer Fire Department (see Exhibit 11 in Appendix 4). Of the 112 SWM structures in the backlog, 29 are pending their first year inspections, 26 are pending their triennial inspections, 27 require additional follow-up compliance inspections, and 30 are pending possible enforcement action (see Exhibit 11 and 12 in Appendix 4).

In addition, the county provided a table listing their overdue inspections sites, which are sites that have been scheduled for inspection but have not been inspected in the last three years (see Exhibit 13 in Appendix 4). Of the approximately 282 SWM sites overdue for inspection, approximately 214 sites are inside the Development District and the 214 sites include approximately 390 SWM structures (see Exhibit 13 and 10 in Appendix 4). Of the 390 SWM structures overdue for inspections in the Development District, 346 are privately owned and maintained, while 44 are publically owned and maintained by either Charles County or the Charles County Board of Education (see Exhibit 11, 12, and 13 in Appendix 4). Of the 390 SWM structures overdue for inspections in the Development District, 68 are pending their first year inspections, 93 are pending their triennial inspections, 197 require additional follow-up compliance inspections, and 32 are pending possible enforcement action (see Exhibit 11, 12, and 13 in Appendix 4).

Mr. Gary Davis, a contracted inspector for the county, stated that he can complete between 25 and 50 SWM structure inspections in one month including follow-up activities. However, he is responsible for all 1,266 SWM structures in Charles County and not just the 660 in the Development District (see Exhibit 10 in Appendix 4). He noted that the most frequent issues causing inspection delays and corrective action include identifying the appropriate owners and responsible parties and making contact with appropriate home owners associations and/or management companies to bring the SWM structures up to maintenance standards.

The EPA Inspection Team shadowed Mr. Davis while he conducted an inspection of the privately-owned and maintained dry pond and sand filter at the Truck'N America commercial site on June 26, 2013 located within the Development District at 2140 Old Washington Road, Waldorf, Maryland. According to the inspection schedule, the SWM structures on this site (#040097) were scheduled for inspection on November 21, 2008, but were not inspected prior to the EPA Inspection Team's visit (see Exhibit 11 in Appendix 4). The EPA Inspection Team observed that areas of the dry pond and sand filter had:

- Overgrown vegetation including trees (see Photographs 16 through 19 in Appendix 5);
- Fencing around the perimeter that was falling down (see Photograph 20 in Appendix 5); and
- Water pooling outside of the dry pond and not draining properly (see Photograph 21 in Appendix 5).

Lastly, Mr. Davis noted that he could not do a complete inspection due to the overgrowth and would give the site 90 days to mow the area before he came back for a reinspection. These observations were noted in the inspection form completed by Mr. Davis (see Exhibit 14 in Appendix 4).

The EPA Inspection Team also visited Pond 1 in Section 1 of the Ashford Oaks community on June 26, 2013 located within the Development District near the intersection of Ashford Drive and Ashford Circle, Waldorf, Maryland. Ashford Oaks contains five sections, each containing one or more wet or dry ponds, all of which are privately-owned and maintained. According to the inspection schedule, the two wet ponds in Section 1 (#880075) and the dry pond in Section 2A (#900129) were overdue for their triennial inspections, while the ponds in the remaining sections had outstanding follow-up compliance inspections (see Exhibit 13 in Appendix 4). The EPA Inspection Team shadowed Mr. Davis while he conducted an inspection of Pond 1. Mr. Davis stated that he had last visited the pond in 2012, but did not complete an inspection at the time. The team observed:

- A broken fence latch (see Photograph 22 in Appendix 5);



- Bare spots and erosion along the banks and inlet structures (see Photographs 23 through 25 in Appendix 5).
- Sediment accumulation near inlet structures (see Photograph 26 in Appendix 5);
- Sediment accumulation in the conveyance area in front of the weir wall. Sediment had accumulated above the height of the weir (see Photograph 27 in Appendix 5);
- Debris accumulation near the weir wall (see Photograph 28 in Appendix 5);
- Overgrown vegetation around the fence and on the slope behind the weir wall. Mr. Davis stated that the area was last cleared in 2008. Mr. Davis stated that all vegetation should be mowed to the toe of the slope and at least 20 feet back from the weir wall (see Photographs 29 through 31 in Appendix 5).

These observations were noted in the inspection form completed by Mr. Davis and the site was given 90 days to perform the necessary maintenance before reinspection (see Exhibit 15 in Appendix 4).

### **Part III.E.2 – Illicit Connection Detection and Elimination**

Charles County shall maintain its illicit connection detection and elimination program. At a minimum, Charles County shall complete the following:

- a. Ensure that all discharges to the municipal separate storm sewer that are not composed entirely of stormwater are either permitted by MDE or eliminated;
- b. Annually, field screen at least 100 outfalls. Each outfall having a discharge or suspected of having an illicit discharge shall be sampled using a chemical test kit;
- c. Report annually the results of field screening activities on MDE's illicit connection detection database. The following narrative shall also be included: the number of illegal storm drain connections, the results of investigations made, any enforcement used, the disposition of all illegal storm drain system connections found as a result of this portion of Charles County's stormwater management program, and an updated list of targeted outfalls and an inspection schedule; and
- d. Identify all County-owned facilities requiring an NPDES discharge permit and submit documentation that a permit has been obtained for each. The implementation status of pollution prevention plans for these County-owned facilities shall also be submitted with the County's annual reports.

Observation 5: It appears that Charles County is not ensuring that all non-stormwater and non-permitted discharges to the MS4 are eliminated. Illicit connection detection and elimination issues at Outfalls 26 and 56 were first observed by the county in 2008 and were not resolved at the time of the EPA inspection (see Exhibit 16 in Appendix 4). Observed issues are often not resolved or inspected until the next year's annual inspection (see Exhibit 16 in Appendix 4). Ms. Karen Wiggen stated that the county defers illicit discharge investigations and follow up actions associated with businesses

to MDE rather than enforcing the permit at the county level (see Complaint Numbers 3, 5, 7, 10, 11, 20, 24, 29, 35, and 36 in Exhibit 16 in Appendix 4). When an illicit discharge is observed or reported, the county follows protocols outlined in the Water Quality Violation Procedures document that indicates which agency is responsible for follow-up inspections and enforcement (see Exhibit 17 in Appendix 4). The county's Storm Drainage Ordinance gives the county inspection and enforcement authority to stop illicit discharges (see Exhibit 18 in Appendix 4). The county has no record of issuing a fine for an illicit discharge since the start of the permit term. The EPA Inspection Team was told by the county that there are no instant fines that can be issued and that the county would need to go through the legal process in order to enforce monetary penalties.

While inspecting Outfall 26 on June 26, 2013, the EPA Inspection Team observed wash water entering a site storm drain at the Speedy Clean Car Wash located at 1320 Smallwood Drive West (see Photograph 32 in Appendix 5). This illicit discharge has been an ongoing issue since 2008 when detergents were detected at the outfall (see Exhibit 19 in Appendix 4). Charles County personnel did not take enforcement action while on site with the EPA Inspection Team and said that the issue was being handled by MDE.

The EPA Inspection Team observed a white residue (see Photograph 33 in Appendix 5) at Outfall 56 during a site visit on June 26, 2013. Excessive algae and a white residue were observed by the county at Outfall 56 during inspections in 2008, 2010, 2011, and 2013 (see Complaint Numbers 5, 19, and 30 in Exhibit 16 in Appendix 4). A windshield survey of the commercial shopping center located upstream was not performed until the 2013 outfall inspection (see Exhibit 20 in Appendix 4). During the 2013 windshield survey performed by the county's contractor, KCI, poor housekeeping for grease trap management was observed near storm inlets in the Smallwood Village Shopping Center that lead to Outfall 56. The EPA Inspection Team performed a site visit of the Smallwood Village Shopping Center and observed dumpsters with open lids. Debris and pavement stains were observed near storm drains (see Photograph 34 in Appendix 5), which is consistent with what was observed during KCI's inspection on April 16, 2013 (see Exhibit 20 in Appendix 4).

Access database and the Hansen system. The County historically used the MS Access database and began entering BMP inspection records into both the MS Access database and Hansen system in November 2010. Each system stores slightly different information.

In 2009, prior to using the Hansen system for recording BMP inspections, Frederick County lost a number of electronic records including BMP inspection records from at least 2003 through 2007. Frederick County has been unable to restore all records from database backups. Without complete records, Frederick County cannot confirm that all BMPs are inspected at least triennially. For example, for the Stonebridge Regional Shallow Marsh Pond (BMP ID 1), while an inspection was scheduled for 2005, there is no record of an inspection between 2002 and 2007. Additionally, for Tranquility (BMP ID 24), there is no record of any inspection occurring between 1999 and 2008. For the Potomac Station Regional Retention Pond (BMP ID 7), there is no record of any inspection occurring prior to 2011, even though the BMP was built in 1992. See Exhibit 1 in [AttachmentAppendix 4](#) for the BMP inspection records. It is unclear whether inspections did not occur or if the records were lost.

As of August 6, 2012, the County had updated the Hansen system to include all relevant fields for BMP inspections and transitioned to using only the Hansen system to track new inspections and is transferring old inspection records into Hansen as time allows and as new inspections become due. Currently 250 of the 731 BMPs in Frederick County have been entered into the Hansen system.

**Part III.E.2. (Illicit Discharge Detection and Elimination)** – Part III.E.2 of the Permit requires that the permittee shall maintain its illicit connection detection and elimination program. At a minimum, the Permittee must ensure that all discharges to the MS4 that are not composed entirely of stormwater are either permitted by MDE or eliminated. The permittee must also screen 150 outfalls and sample any discharges at the outfalls using a chemical test kit. The permittee must also report annually the results of field screening activities on MDE’s illicit connection detection database. Additionally, the Permittee must identify all County-owned facilities requiring an NPDES discharge permit and submit documentation that a permit has been obtained for each facility. The implementation status of pollution prevention plans for County-owned facilities are required to be submitted in the County’s annual report.

Observation 2: Dry weather screening of outfalls is associated with existing SWM facilities (e.g., stormwater ponds) and outfalls are therefore not necessarily selected based on high-risk such as commercial or industrial activities. In 2011, Frederick County conducted field screening of 274 outfalls or stormwater management structures for dry weather flows, however only 104 of the outfalls or structures (approximately 40 percent) are associated with stormwater runoff from commercial and industrial areas (see Exhibit 2 in [AttachmentAppendix 4](#)). The remaining screened outfalls are associated with residential areas or institutional areas such as schools, churches and athletic fields.

Observation 3: Frederick County has contracted with Versar, a company specializing in field screening, to conduct field screening when a dry weather flow is discovered. Because Versar is conducting field screening on a regular basis for a variety of similar type programs, they are familiar with the use of field sampling and analysis methods.

Observation 4: Frederick County inspectors are not contacting Versar to conduct sampling and field screening on every occasion when flow is observed. For example, according to the Access database, dry weather flow was observed on three separate occasions leaving Pond B at the Stanford Business Park; however, no field screening was conducted by Versar (see Exhibit 3 in [AttachmentAppendix 4](#)). During the inspection conducted with the EPA Inspection Team on April 24, 2012, flow was again observed entering Pond B; however, a rain event had occurred with 48 hours of the inspection. The flow entering Pond B appears to originate from a property currently being operated by CINTAS, an industrial laundry (see Photographs 1 and 2 in [AttachmentAppendix 5](#)). Frederick County inspectors stated they would perform another inspection of Pond B later in the week and if flow was still observed, then Versar would be contacted and chemical testing performed.

Another similar issue was identified in Frederick County's inspection documentation which showed a dry weather flow observed at Creekside Park H.O.A. – c/o Kent Briddell Construction, Inc. in December 2009; however, no field testing of the dry weather flow was conducted (see Exhibit 3 of [AttachmentAppendix 4](#)).

Observation 5: Frederick County inspectors are not examining inflow points into SWM facilities to determine if illicit discharges are occurring. Frederick County inspectors stated they are making observations of the outfall from stormwater facilities, but generally are not making observations to determine if water is flowing into the facility. During dry weather periods, water levels in structures such as ponds may be below overflow structures at outfalls, and therefore no flow may be leaving the structure, even though dry weather discharges may be entering the structure. MDE's Review of Frederick County's 2008 Annual Report also made a similar observation, stating that at a minimum, the inflow points to stormwater facilities should be inspected during triennial inspections in addition to outflows to comply with Part E.2.b.

Observation 6: Table 6-1 of the Frederick County 2011 NPDES MS4 Permit MD0068357 Annual Report (Annual Report) shows a number of stormwater pollution prevention plans (SWPPPs) for Frederick County-owned properties were still in progress, even though some had been initially permitted by MDE as far back as 2005. For example, the Frederick Highway Operations Facility was issued a stormwater permit from MDE on March 8, 2005; however, as of December 31, 2011 the SWPPP was still in progress.

Permits for three satellite highway maintenance facilities were issued in December 2004; however the SWPPPs for these facilities were still in progress as of December 31, 2011 (see Exhibit 4 of [AttachmentAppendix 4](#)).

Observation 7: SWPPPs for county-owned properties have not been fully implemented. Personnel from the Frederick County CDD stated that although the SWPPPs have been recently finalized, the annual and quarterly inspections have not yet been initiated. During walk-through inspections of County-owned facilities by the EPA Inspection Team on April 24, 2012, a number of issues were identified which could have been corrected if inspections were being conducted. For example, an overfilled tote containing spent engine coolant was discovered outside the maintenance shop at the Hayward Road Bus Lot, along with an open-top 55-gallon drum containing oily metal parts (see Photographs 3 through 5, [AttachmentAppendix 5](#)).

Observation 8: At County-owned facilities where SWPPPs were completed prior to December 2011, inspection data is not available. For example, when the EPA Inspection Team requested stormwater inspection records for the Reich's Ford Landfill which was originally permitted in 1992, it was learned that inspections have not been conducted and no documentation was available.

Observation 9: Industrial stormwater inspector training for those individuals responsible for SWPPP implementation at county-owned properties has not been provided. General stormwater awareness training for all employees working at county-owned properties has not been provided. Based on discussions with Frederick County and their contactor, Versar, the County is currently in the process of identifying the types of training needed for employees, and will be developing and providing that training next few months.

**Part III.E.4. (Erosion and Sediment Control)** – Part III.E.4 of the Permit requires that the Permittee maintain an acceptable erosion and sediment control program. At a minimum, the Permittee must address needed program improvements identified during MDE's evaluation of the permittee's application for the delegation of erosion and sediment control enforcement authority. Additionally, the Permittee must conduct responsible personnel certification classes to educate construction site operators regarding erosion and sediment control compliance at least twice per year, and record the activity on MDE's green card database. Finally, beginning on September 11, 2002, the Permittee must report information on a quarterly basis regarding earth disturbances of five acres or more. Beginning on August 5, 2003, this requirement changed to regarding earth disturbances of one acre or more.

Frederick County has implemented an ongoing online training course for construction site operators. Interested parties can download the class and submit the test at their leisure.

Frederick County found that the online course resulted in reduced staff time requirements and an increase in class attendees and certified operators. The County issued 45 certifications in 2011.

Observation 10: Frederick County makes erosion and sediment control inspection results publicly available through their website. Since 2002, Frederick County has tracked erosion and sediment control inspections in the Hansen system. Once inspection reports are entered into the county's Hansen system, the reports are uploaded to the Hansen Connect system, which allows public access to the construction site inspection records from Frederick County's Permit Portal website. The records can be accessed by entering the site's permit number (AP#) and following the instructions provided in Exhibit 5 of [AttachmentAppendix 4](#).

Observation 11: Frederick County does not have a formal training process for new construction inspectors. After losing a veteran inspector in 2011, Frederick County hired a part-time inspector. While the inspector had previous related experience, the inspector had not been formally trained in BMP and construction site inspections. The inspector received on-the-job training. Frederick County has a standard operating procedure (SOP) for inspection report writing, enforcement and prioritization of construction site inspections (see Exhibit 6 in [AttachmentAppendix 4](#)); however, the inspector did not always follow the SOP in regards to escalating enforcement. For example, at the Hebron Christian Church construction site (AP# 78838), the inspector identified repeated issues with stockpiles and silt fencing three separate times and marked each inspection status as "passed". Upon the fourth inspection where the same issues were observed, the inspector issued a "failed" status (see Exhibit 7 of [AttachmentAppendix 4](#)). The SOP states that the identification of any erosion and sediment control issues constitutes a failed inspection. The inspector supervisor stated that the incorrect inspection status was the result of a training issue.

Similarly, for the Ijamsville Road public construction site, email documentation between Frederick County staff and MDE shows that numerous sediment control issues were identified on site between November and December 2011. An email dated December 9, 2011 states "no more work (excavation) is to be completed until sediment controls are installed" (see Exhibit 8 of [AttachmentAppendix 4](#)). However, all inspection reports during this time frame show an inspection status of "passed" (see Exhibit 9 in [AttachmentAppendix 4](#)).

Observation 12: Frederick County is not thoroughly inspecting and conducting follow-up and enforcement at all construction sites. On April 25, 2012, the EPA Inspection Team visited the Windsor Knolls construction sites, located at 3328 Winmoor Drive, Ijamsville, MD, along with Frederick County staff. Frederick County manages Windsor Knolls as two adjacent sites. One site is the subdivision area which has been split into individual lots (AP#

93027). The second site primarily consists of a sediment basin (AP# 87193). The majority of each site is stabilized but there is active construction on some of the individual lots. During the visit conducted with the EPA Inspection Team, significant rill erosion along the banks of the sediment basin was observed (see Photographs 6 through 8 of [AttachmentAppendix 5](#)). While the inspector had inspected the subdivision area at least once per month in 2011, the inspector had not inspected the sediment basin area since January 23, 2012. The inspector had noted the erosion problems and marked the inspection status as failed for the past three inspections at the site on December 2, 2011, December 28, 2011, and January 23, 2012 (see Exhibit 10 in [AttachmentAppendix 4](#)). After the EPA Inspection Team's visit, the inspector conducted inspections on May 3, 2012 and May 16, 2012 and proposed a course of action to resolve the issues. The inspector noted the rill erosion had been repaired in his June 28, 2012 inspection report (see Exhibit 11 of [AttachmentAppendix 4](#)).

Observation 13: Frederick County does not have standard operating procedures (SOPs) for using the Hansen system for plan review or inspection reporting. The Hansen system is used for many activities across the county. The system has been tailored to accommodate each activity, resulting in a large number of codes to be used to record work types and inspections. There are 3,136 default comments a user can select when entering information into Hansen. More than one code or comment may apply to a situation, and therefore, two users may record the same issue in two different ways, which could lead to tracking issues. While the County's Hansen Information Technologies Department has developed manuals used by the Intake Department for entering and managing activities in the Hansen system, no similar manuals or SOPs are available for plan reviewers and inspectors detailing which codes should be used to describe common plan review or inspection findings.

**Part III.E.6. (Road Maintenance)** – Part III.E.6 of the Permit requires that the Permittee develop and implement a plan to reduce pollutants associated with road maintenance activities. At a minimum, the Permittee must document that they are cleaning inlets; reducing the use of pesticides, herbicides, fertilizers, and other pollutants associated with roadside vegetative management practices through the use of integrated pest management; and controlling the overuse of winter weather deicing materials through continual testing and improvement of materials and effective decision making.

Observation 14: An SOP for controlling excessive use of deicing materials is available; however, in the area down-gradient of the salt barn at the Frederick Highway Operations Facility, salt-impacted vegetation had been removed and new mulch/seed mats had been added (see Photograph 9 of [AttachmentAppendix 5](#)).

**Part III.F. (Watershed Restoration)** - The Permit requires Frederick County to continue its systematic assessment of water quality within its watersheds and to target restoration efforts in those areas where opportunities to improve water quality are significant and where prior restoration efforts have been insufficient to meet goals established by the county.

Observation 15: Frederick County has developed watershed assessments for approximately 60% of the County. The County also develops restoration assessments and retrofit/restoration reports which focus on engineering and practical issues related to stream restoration and BMP retrofits. Restoration strategies for the Upper and Lower Monocacy River Watershed have been recognized by the state and EPA. The County has implemented stream restoration in the Ballenger Creek and Linganore watersheds. Additionally, Frederick County has installed bioretention facilities at a school which previously only had a stormwater quantity pond. Water quality monitoring results from the bioretention facility will be used as a teaching tool.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

MAR 18 2014

Ms. Shannon Moore, Manager  
Office of Sustainability and Environmental Resources  
Frederick County Government  
30 North Market Street  
Frederick, Maryland 21701

Re: Opportunity to Show Cause

Dear Ms. Moore:

This letter is in reference to an investigation the United States Environmental Protection Agency, Region III, (EPA or Agency) conducted of Frederick County's (Frederick) implementation of the requirements of its National Pollutant Discharge Elimination System (NPDES) permit for discharges from its municipal separate storm sewer system (MS4), as well as Frederick's compliance at county- owned and/or operated facilities with Maryland's General Permit for Stormwater Discharges Associated with Industrial Activity, Discharge Permit No. 02-SW (General permit). As you are aware, EPA and its contractors conducted an inspection of Frederick's stormwater program on April 24 and 25, 2012. Based on the information currently available to EPA, EPA believes that Frederick was not in compliance with its NPDES permit and the General permit.

Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to water of the United States except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

EPA authorized the Maryland Department of the Environment (MDE) to issue NPDES permits in 1989 under Section 402(b) of the Act, 33 U.S.C. § 1342(b). Permit No. MD0068357 (Frederick's Permit) was made effective on March 11, 2002 to govern the discharge of storm water through Frederick's MS4. EPA understands that Frederick's Permit has been administratively extended and remains in effect. Maryland's General Permit for Stormwater Discharges Associated with Industrial Activity, Discharge Permit No. 02-SW was made effective on December 1, 2002, and has likewise been administratively extended and remains in effect.

### **CWA Violations Alleged by EPA**

#### **Failure to Have and Implement Storm Water Pollution Prevention Plans:**

Parts IV.B. and C. of the General permit requires that the permittee shall have and implement a stormwater pollution prevention plan (SWPPP) for each facility covered under the General permit. At the time of the inspection, Frederick was the permittee for thirteen (13) County-owned and/or County-operated facilities which had coverage under the General permit. At the time of the inspection nine of the thirteen County-owned and/or County-operated facilities covered by the General permit did not have finalized SWPPPs. Observations made by the EPA inspection team support the conclusion that SWPPP development, SWPPP implementation, site inspections, and employee training had not occurred at those facilities.

#### **Failure to Maintain an Acceptable Erosion and Sediment Control Program:**

Part III.E.4 of the NPDES permit requires Frederick to maintain an acceptable erosion and sediment control program in accordance with Environment Article, Title 4, Subtitle 1 of the Annotated Code of Maryland. Code of Maryland Regulations 26.17.01.09.D. requires Frederick to inspect sites with an approved erosion and sediment control plan an average of once every 2 weeks for compliance with the approved plan. Code of Maryland Regulations 26.17.01.09.I. requires Frederick to use enforcement action when erosion and sediment control violations occur. During the inspection, the EPA inspection team accompanied Frederick County staff on an inspection of the Windsor Knolls construction sites, located at 3328 Winmoor Drive in Ijamsville, MD. Frederick County manages Windsor Knolls as two adjacent sites; one site is a subdivision area, and the other primarily consists of a sediment basin. While at the sediment basin site, the EPA inspection team noted significant rill erosion along the banks of the sediment basin. The EPA inspection team also noted that prior to the April 25, 2012 EPA inspection, the Frederick County inspector had not inspected the sediment basin site since January 23, 2012. Further, the Frederick County inspector had noted the erosion problems at the sediment basin and marked the site's inspection status as "failed" for the three prior inspections on December 2, 2011; December 28, 2011; and January 23, 2012. Despite noting the erosion problems at the site and the site's three consecutive failed inspections, Frederick County had not taken any enforcement action at the site.

### **Request to Show Cause**

EPA believes that the issuance of an Administrative Complaint seeking assessment of a civil penalty of \$59,400 for the aforesaid violations is an appropriate enforcement response in this matter. EPA, however, would prefer to reach a negotiated settlement prior to the filing of a complaint. Settlements reached prior to the filing of a complaint typically offer benefits to both sides, such as avoidance of the costs of litigation as well as more flexibility in the type of settlement reached, such as a settlement that includes a Supplemental Environmental Project (for more information, please see EPA's Supplemental Environmental Project Policy, attached

hereto). To that end, EPA is hereby providing Frederick with an opportunity to confer with the Agency in the hope that the parties can commence settlement discussions and resolve this matter without engaging in litigation.

If Frederick is interested in resolving this matter prior to the filing of a complaint, Frederick should respond in writing within **fourteen (14) calendar days** of receipt of this letter. EPA is prepared to meet with Frederick representatives to further discuss the violations, potential penalties and settlement. Prior to the close of that first meeting, EPA expects that Frederick will advise the Agency whether it is willing to make the required commitment to settle this case before litigation. In addition, a firm schedule for any continuing negotiations must be established prior to, or during, that first meeting and settlement negotiations resulting in a signed Consent Agreement and Final Order (CAFO) must be completed within **ninety (90) calendar days** of receipt of this letter. Any final settlement and CAFO will be subject to final approval by the Regional Administrator for EPA Region III or his designee. A draft CAFO is enclosed for your convenience.

EPA specifically reserves the right to use any and all enforcement tools at its disposal to address past and/or ongoing violations regardless of any ongoing discussions in response to this Letter to Show Cause.

Please direct your written response as well as all questions and communications with respect to any matters addressed in this letter to the attorney assigned to represent EPA:

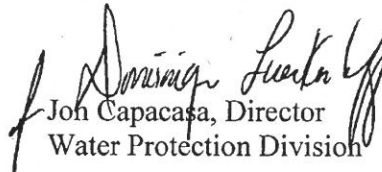
Mark Bolender  
Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
Tel: (215) 814-2642  
bolender.mark@epa.gov

For your further information, please be advised that certain entities may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether Frederick may be subject to such requirements.

*Frederick County, Maryland  
Opportunity to Show Cause*

I strongly encourage you to give this matter your full consideration. Please be aware that should Frederick and EPA fail to reach a settlement agreement in this matter, EPA reserves the right to seek the maximum allowable penalty at law in litigation.

Sincerely,

  
Jon Capacasa, Director  
Water Protection Division

Enclosure

cc: Mark Bolender (EPA)  
Rebecca Crane (EPA)  
Andrew Dinsmore (EPA)  
Raymond Bahr (MDE)

## Attachment A

### Frederick County Owned/ Operated Facilities Lacking Implemented SWPPPs as of April 24- 25, 2012

Facility Name	Address	City	Zip	General Permit for Industrial Facilities Number	Permit Issue Date
Frederick County TransIT	1040 Rocky Springs Rd	Frederick	21702	02SW1888	1/20/2005
New Market WWTP	7 Bye Alley	New Market	21744	02SW2282	2/13/2012
Jefferson WWTP	3352 Westport Drive	Jefferson	21755	02SW2283	2/13/2012
Frederick Highway Operations Facility	331 Montevue Lane	Frederick	21702	02SW1890	3/8/2005
Johnsville Satellite Facility	13216 Coppermine Rd	Union Bridge	21791	02SW1891	12/29/2004
Thurmont Satellite Facility	7407 Blue Mountain Rd	Thurmont	21788	02SW1892	12/29/2004
Urbana Satellite Facility	3471-A Campus Drive	Ijamsville	21754	02SW1893	12/26/2004
Myersville Maintenance Satellite Facility	10917 Pleasant Walk Road	Myersville	21773	02SW2285	2/14/2011
Ballenger- McKinney WWTP	7400 Marcie's Choice Lane	Frederick	21704	02SW1878	12/2004

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Frederick County  
30 North Market Street  
Frederick, Maryland 21701

Respondent.

Proceeding to Assess Class II  
Administrative Penalty Under  
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2014-0084

**CONSENT AGREEMENT  
AND FINAL ORDER**

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Frederick County Maryland ("Frederick County" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

**II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, and CONCLUSIONS OF LAW**

4. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

6. At all times relevant to this Complaint, Respondent has owned and/or operated industrial facilities as that term is defined in 40 C.F.R. § 122.26(b)(14).

7. Respondent's MS4 is located within the geographic boundaries of the County.

8. Frederick County encompasses a total area of approximately 424,960 acres. According to the County, its population is estimated at 233,385 people at the time of the 2010 U.S. Census. The population served by the MS4 is 135,647.

9. Stormwater from the MS4 drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Catoctin Creek, Double Pipe Creek and the Potomac River, all of which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

12. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

13. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

14. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a



State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

16. Respondent’s MS4 serves a population of at least 100,000 people.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits on September 5, 1974.

18. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068357 which became effective on March 11, 2002 (hereinafter the “MS4 Permit”).

19. The expiration date of the MS4 Permit was March 11, 2007; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

20. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

21. On December 1, 2002 MDE issued to Respondent a General Discharge Permit for Storm Water Associated with Industrial Activities (“Industrial Stormwater Permit”). The permit, effective December 1, 2002, also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.

22. On April 24 & 25, 2012, a compliance inspection team comprised of EPA and authorized representatives of EPA inspected Respondent’s MS4 program and compliance with the Industrial Stormwater Permit at County-owned and/or County-operated facilities (the “Inspection”).

23. At the time of the inspection, Respondent had obtained permit coverage under the Industrial Stormwater Permit for thirteen (13) County-owned and/or County-operated facilities.



### **III. FINDINGS OF VIOLATION**

#### **Failure to Maintain an Acceptable Erosion and Sediment Control Program**

24. Part III.E.4 of the MS4 Permit requires Respondent to "maintain an acceptable erosion and sediment control program in accordance with the Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland."

25. Code of Maryland Regulations 26.17.01.09.D. requires Respondent to inspect sites with an approved erosion and sediment control plan an average of once every 2 weeks for compliance with the approved plan.

26. Code of Maryland Regulations 26.17.01.09.I. requires Respondent to use enforcement action when erosion and sediment control violations occur.

27. At the time of inspection, Respondent was not conducting follow-up enforcement for erosion and sediment control violations at the Windsor Knolls construction site in Ijamsville, Maryland.

28. By not conducting follow-up enforcement for erosion and sediment control violations, Respondent is in violation of the MS4 Permit.

#### **Failure to Have and Implement Storm Water Pollution Prevention Plans**

29. Parts IV.B. and C. of the Industrial Stormwater Permit require that Respondent have and implement a stormwater pollution prevention plan (SWPPP) for each facility covered under the Industrial Stormwater Permit.

30. At the time of the inspection, Respondent had not implemented SWPPPs at nine (9) of Respondent's facilities covered under the Industrial Stormwater Permit.

31. By not implementing SWPPPs at the facilities covered under the Industrial Stormwater Permit, Respondent is in violation of the Industrial Stormwater Permit.

32. Respondent's failure to comply with the MS4 Permit and Industrial Stormwater Permit violates Section 301 of the Act, 33 U.S.C. § 1311.

### **IV. CONSENT AGREEMENT AND FINAL ORDER**

33. Respondent admits the Findings of Fact, Jurisdictional Allegations, and Conclusions of Law set forth in Section II, above.

34. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.

35. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

36. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

37. Each party to this action shall bear its own costs and attorney fees.

38. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

39. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

40. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

41. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **fifty nine thousand four hundred dollars (\$59,400)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

42. Respondent shall pay the total administrative civil penalty of **fifty nine thousand four hundred dollars (\$59,400)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, i.e., CWA-03-2014-.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Box 979077  
St. Louis, MO 63197-9000

Contact: 513-487-2091

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court

Riverdale, MD 20737

Contact for ACH: John Schmid (202-874-7026)  
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Mark J. Bolender  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

43. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

44. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

45. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

46. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

47. The penalty specified in Paragraph 51 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

48. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

49. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

50. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**V. PUBLIC NOTICE AND EFFECTIVE DATE**

51. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

FOR RESPONDENT, FREDERICK COUNTY:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*In re: Frederick County*  
*EPA Docket No.: CWA-03-2014-0084*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

\_\_\_\_\_  
Jon M. Capacasa, Director  
Water Protection Division

*In re: Frederick County*  
*EPA Docket No.: CWA-03-2014-0084*

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Shawn M. Garvin  
Regional Administrator  
U.S.EPA Region III



## Philadelphia, Pennsylvania 19103-2029

## CONSENT AGREEMENT AND FINAL ORDER

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

**II. EPA FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, and**  
**CONCLUSIONS OF LAW**

4. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At all times relevant to this CAFO, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

6. At all times relevant to this CAFO, Respondent has owned and/or operated facilities engaging in industrial activities that are included in several of the categories listed in 40 C.F.R. § 122.26(b)(14).

7. Respondent's MS4 is located within the geographic boundaries of the County.

8. Frederick County encompasses a total area of approximately 424,960 acres. According to the County, its population is estimated at 233,385 people at the time of the 2010 U.S. Census. The population served by the MS4 is 135,647.

9. Stormwater from the MS4 drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Catoctin Creek, Double Pipe Creek and the Potomac River, all of which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

12. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

13. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

14. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets,

catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, pursuant to section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p) and 40 C.F.R. § 122.26(a).

16. Respondent’s MS4 serves a population of at least 100,000 people.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits on September 5, 1974.

18. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068357 which became effective on March 11, 2002 (hereinafter the “MS4 Permit”).

19. The expiration date of the MS4 Permit was March 11, 2007; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

20. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a).

21. On December 1, 2002 MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities (“Industrial Stormwater Permit”). The permit, effective December 1, 2002, also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.

22. On April 24 & 25, 2012, a compliance inspection team comprised of EPA staff and authorized representatives of EPA inspected Respondent’s MS4 program and compliance with the Industrial Stormwater Permit at County-owned and/or County-operated facilities (the “Inspection”).

23. At the time of the inspection, Respondent had obtained permit coverage under the Industrial Stormwater Permit for eleven (11) County-owned and/or County-operated facilities.

### **III. EPA FINDINGS OF VIOLATION**

#### **Failure to Maintain an Acceptable Erosion and Sediment Control Program**

24. Part III.E.4 of the MS4 Permit requires Respondent to “maintain an acceptable erosion and sediment control program in accordance with the Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland.”

25. Code of Maryland Regulations (“COMAR”) 26.17.01.09.D. requires Respondent to inspect sites with an approved erosion and sediment control plan an average of once every 2 weeks for compliance with the approved plan.

26. COMAR 26.17.01.09.I. requires Respondent to use enforcement action when erosion and sediment control violations occur.

27. At the time of inspection, Respondent was not conducting follow-up enforcement for erosion and sediment control violations at the Windsor Knolls construction site in Ijamsville, Maryland.

28. By not conducting follow-up enforcement for erosion and sediment control violations, EPA has concluded that Respondent was in violation of the MS4 Permit.

#### **Failure to Have and Implement Storm Water Pollution Prevention Plans**

29. Parts IV.B. and C. of the Industrial Stormwater Permit require that Respondent have and implement a stormwater pollution prevention plan (SWPPP) for each facility covered under the Industrial Stormwater Permit.

30. At the time of the inspection, Respondent had not fully implemented SWPPPs at six (6) of Respondent’s facilities covered under the Industrial Stormwater Permit.

31. By not implementing SWPPPs at these six facilities covered under the Industrial Stormwater Permit, EPA has concluded that Respondent was in violation of the Industrial Stormwater Permit.

32. EPA finds that Respondent’s failure to comply with the MS4 Permit and Industrial Stormwater Permit violates Section 301 of the Act, 33 U.S.C. § 1311.

### **IV. CONSENT AGREEMENT AND FINAL ORDER**

33. For purposes of this proceeding, Respondent admits the Jurisdictional Allegations set forth in Section II, above.

34. For purposes of this proceeding, Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth in Section II, above, or EPA's Findings of Violation set forth in Section III, above.

35. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

36. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

37. Each party to this action shall bear its own costs and attorney fees.

38. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

39. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

40. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1), EPA has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

41. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **twenty nine thousand dollars (\$29,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

42. Respondent shall pay the total civil penalty of **twenty nine thousand dollars (\$29,000)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, i.e., CWA-03-2014-0084.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Box 979077  
St. Louis, MO 63197-9000

Contact: 513-487-2091

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact for ACH: John Schmid (202-874-7026)  
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Mark J. Bolender  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

43. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

44. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of interest on delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

45. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. The County reserves the right to all defenses in response to any action commenced by EPA, including but not limited to, an enforcement proceeding related to this CAFO.

46. The penalty specified in Paragraph 41 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

47. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event. The County reserves the right to all defenses in response to any action commenced by EPA under this paragraph.



48. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

49. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

50. This CAFO does not limit or affect the rights of the County or EPA against any third parties not a party to this CAFO.

**V. PUBLIC NOTICE AND EFFECTIVE DATE**

51. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

FOR RESPONDENT, THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND:

Date: 8-21-14

By: 

Name: Blaine R. Young

Title: President

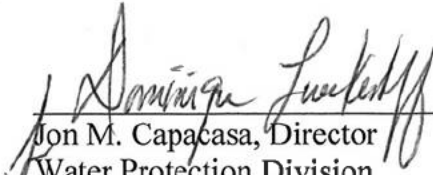
*KRM*  
*8/18/14*

*In re: Frederick County*  
*EPA Docket No.: CWA-03-2014-0084*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:

9/12/14

  
Jon M. Capacasa, Director  
Water Protection Division

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this \_\_\_\_\_ day of \_\_\_\_\_, 2014

---

Shawn M. Garvin  
Regional Administrator  
U.S.EPA Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 20 2012

Mr. Jay Sakai, Director  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

Re: Specific Objection to Frederick County Phase I Municipal Separate Storm Sewer System  
(MS4) Permit MD0068357

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Frederick County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Frederick County. However, MDE did not incorporate EPA's comments into the initial draft of the Frederick County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Frederick County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:



## I. Required Changes

### **1. Water Quality Standards**

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Frederick County permit (Enforcement and Penalties) contains general language related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the latest Frederick County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA’s objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

### **2. Industrial / Commercial Monitoring**

Part III.C of the draft Frederick County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of “a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)...” 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA’s objection, MDE must revise the permit in accordance with those recommendations.

## II. Recommended Change

EPA also suggests the following recommendation for inclusion in the County's permit.

### Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

## III. Anticipated Changes

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Frederick County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Frederick County, EPA hereby reserves its right to renew its objection to such a draft permit.

### **1. Chesapeake Bay TMDL**

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Frederick County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Frederick County permit.

### **2. Backsliding**

EPA had previously expressed a concern that the Frederick County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Frederick County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Frederick County permit.

### **3. Maximum Extent Practicable**

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R. §122.4(c), MDE may not issue the Frederick County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Shannon Moore, Frederick County

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**FREDERICK COUNTY  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

**FINAL  
July 2013**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**



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## EXECUTIVE SUMMARY

From April 24 through 25, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Frederick County's municipal separate storm sewer system (MS4) program in Maryland (the County, Frederick County, the Permittee).

The purpose of this inspection was to obtain information that will assist EPA in assessing Frederick County's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning Frederick County's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

<b>Permit Requirement</b>	<b>Observations</b>
Part III.E.1 – Stormwater Management	Observation 1. Frederick County cannot confirm that all triennial inspections have been completed, due to their use of two different systems to track stormwater management (SWM) facility inspections and lost records.
Part III.E.2. – Illicit Discharge Detection and Elimination	Observation 2. Frederick County screens outfalls at existing SWM facilities (e.g., stormwater ponds) for dry weather flow, and therefore they are not necessarily targeting high risk outfalls, such as those near commercial or industrial activities.  Observation 3. Frederick County has contracted with Versar, a company specializing in field screening, to conduct field screening when dry weather flow through stormwater outfalls is observed.  Observation 4. Frederick County inspectors are not contacting their contractor, Versar, to conduct sampling and field screening on every occasion when flow is observed.  Observation 5. Frederick County inspectors are not examining inflow points into SWM structures to determine if illicit discharges are occurring.  Observation 6. The Frederick County 2011 NPDES MS4 Permit MD0068357 Annual Report shows a number of stormwater pollution prevention plans (SWPPPs) for Frederick County-owned properties were still in development, even though some had been initially permitted by MDE as far back as 2005.  Observation 7. SWPPPs for county-owned properties have not been fully implemented.  Observation 8. At county-owned facilities where SWPPPs were completed prior to December 2011, inspection data is not available.

**Table 1. Summary of Permit Requirements and Inspection Observations**

Permit Requirement	Observations
	<p>Observation 9. Industrial stormwater inspector training for those individuals responsible for SWPPP implementation at county-owned properties has not been provided. General stormwater awareness training for all employees working at county-owned properties has not been provided.</p>
<p>Part III.E.4. – Erosion and Sediment Control</p>	<p>Observation 10. Frederick County makes erosion and sediment control inspection records publicly available.</p> <p>Observation 11. Frederick County does not have a formal training process for new construction inspectors.</p> <p>Observation 12. Frederick County is not thoroughly inspecting and conducting follow up and enforcement at all construction sites.</p> <p>Observation 13. Frederick County does not have a standard operating procedure (SOP) for using the Hansen system for plan review or inspection reporting.</p>
<p>Part III.E.6 – Road Maintenance</p>	<p>Observation 14. An SOP for controlling excessive use of deicing materials is available; however, in the area down-gradient of the salt barn at the Frederick Highway Operations Facility, salt-impacted vegetation had been removed and new mulch/seed mats had been added.</p>
<p>Part III. F. – Watershed Restoration</p>	<p>Observation 15. Frederick County has developed watershed assessments for approximately 60% of the County.</p>

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## INTRODUCTION

From April 24 through 25, 2012, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Frederick County's municipal separate storm sewer system (MS4) program in Maryland (the County, Frederick County, the Permittee). Discharges from the county's MS4 are regulated by National Pollution Discharge Elimination System (NPDES) Permit Number MD0068357 (the Permit), which is included in Appendix 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing the county's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Appendix 2.

The EPA Inspection Team obtained its information through a series of interviews with representatives from the County, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

Frederick County:

**Community Development Division (CDD)**

Mr. Eric Soter, Director, CDD

Ms. Shannon Moore, Acting Manager, Office of Sustainability and Environmental Resources (OSER)

Mr. Dave Crable, Project Manager IV, Department of Development Review

Mr. Bob Cramer, Inspector, Environmental Compliance Section

Mr. Tim Goodfellow, Principal Planner II, Division of Planning & Zoning

Mr. Reidd Hammond, Inspector, Environmental Compliance Section

Mr. Jason Jones, Geographic Information Systems (GIS) Specialist, Information Technologies

Mr. Vijay Kapoor, Project Manager, Division of Planning & Zoning

Mr. Rick Masser, Construction Manager II, Environmental Compliance Section

Ms. Jessica Seipp, Project Manager III, Watershed Management Section

**Department of Public Works (DPW)**

Ms. Darlene Bucciero, Project Manager IV, Office of Project Management

**Frederick County Public Schools (FCPS)**

Mr. Gary Barkdoll, Manager – Central Maintenance Shops

Ms. Laura Olsen, Manager – Environmental Health and Safety

EPA Representatives: Mr. Andrew Dinsmore, EPA Region 3  
Ms. Rebecca Glyn, EPA Region 9 (on detail to Region 3)  
Ms. Lori Kier, EPA Office of Regional Counsel  
Ms. Aureana Nguyen , EPA Region 3

Maryland MDE  
Representatives: Mr. Ray Bahr, Chief Program Review Division, Water Management  
Administration  
Ms. Deborah Cappuccitti, Natural Resources Planner  
Ms. Dela Dewa, Regulatory and Compliance Engineer

EPA Contractors: Mr. Mark Briggs, ERG  
Ms. Eleanor Ku Coddling, ERG  
Ms. Kavya Kasturi, ERG  
Ms. Daisy Wang, ERG

For a complete list of all inspection participants, please refer to Appendix 3.

After introductions, Andrew Dinsmore, EPA, presented his enforcement officer credentials to Frederick County representatives, provided business cards with his contact information, identified that Section 308 of the Clean Water Act gives EPA the authority to conduct inspections, and described the purpose of the inspection.

During the inspection, the EPA Inspection Team obtained documentation and other supporting evidence regarding compliance with the Permit. Pertinent information may have been obtained prior, and/or after meeting with the county's staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation used as supporting evidence is provided in Appendix 4 and photo documentation is provided in Appendix 5. A complete list of documents obtained is provided as a Document Log, Appendix 6.

The report below describes and outlines the Permit requirements with the applicable permit sections cited, the related requirements and observations made during the inspection. The format of the report follows the numeric system used in the Permit. Sections of the permit are restated with observations about those requirements listed below.

Partly cloudy weather conditions were experienced during most of the inspection activities. The weather history reports from the National Climatic Data Center for Frederick, MD indicated that there were 0.31 inches of rain in the County during the field work component of the inspection activities. In addition, the weather history reports indicated approximately 1.74 inches of precipitation had fallen in the three days prior to the inspection and approximately 0.02 inches had fallen in the three days following the inspection.

## **FREDERICK COUNTY BACKGROUND**

The County's current NPDES permit became effective on

March 11, 2002 and was to expire March 11, 2007. The Permit was administratively continued since MDE has not issued a new permit.

Frederick County staff stated that the County encompasses approximately 424,960 acres of land, which is roughly 35% forest, 58% agriculture, and 5% urban. The total population of the county, including incorporated municipalities, is estimated to be 233,385 people at the time of the 2010 U.S. Census. However, the population served by the MS4 system is 135,647. The MS4 discharges into five state watersheds: Lower Monocacy and Upper Monocacy River, Catoctin Creek, Double Pipe Creek, and the Potomac River. The County's staff has subdivided the watersheds into 20 NPDES management units with smaller branches and catchments. A full list of the 20 management units can be found in the CD Document Log.

Currently the County has approximately 15 personnel, three inspectors, and approximately 14 other staff to implement the MS4 program. The county does not currently charge a stormwater fee; the program is funded through partnerships with outside grantors and through its coordination of the Monocacy and Catoctin Watershed Alliance (MCWA). According to the Frederick County 2011 NPDES MS4 Permit MD0068357 Annual Report (Annual Report), the FY 2012 budget, beginning in July 2011, is \$614,081, which includes \$189,806 in personnel expenses and \$424,275 in operating expenses.

## **INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS**

### **Part III: Standard Permit Conditions**

**Part III.C. (Source Identification)** – Part III.C of the permit requires that the Permittee identify the sources of pollutants in stormwater runoff and link them to specific water quality impacts on a watershed basis. In addition, the Permittee is required to collect and continually update source identification data regarding the MS4. The Permit, Part III.C.2, requires the Permittee to continue development of its GIS in relation to source identification data.

Frederick County has developed a GIS mapping system for the entire county that includes land use, stormwater inlets and outfalls, and stormwater management (SWM) facilities and stores a large number of attributes. Each of the SWM facilities in GIS has a unique identification number that can be tracked using a separate Microsoft (MS) Access database. The GIS mapping system along with the MS Access database are used to locate and track maintenance of stormwater management facilities, dry weather inspections, and field screening data. Additionally, PDFs of the site plans can be called up via the GIS interface. Frederick County staff regularly use the mapping system and the County is working to incorporate data from the Phase II MS4s within the county.

**Part III.E.1. (Stormwater Management)** – Part III.E.1 of the Permit requires that the permittee shall inspect and maintain public (SWM) and Best Management Practice (BMP) facilities. At a minimum, the permittee will conduct preventative maintenance inspections of all SWM facilities on at least a triennial basis.

Observation 1: Frederick County cannot confirm triennial inspections due to lost records. Frederick County uses two systems to track BMP inspections: an MS



Access database and the Hansen system. The County historically used the MS Access database and began entering BMP inspection records into both the MS Access database and Hansen system in November 2010. Each system stores slightly different information.

In 2009, prior to using the Hansen system for recording BMP inspections, Frederick County lost a number of electronic records including BMP inspection records from at least 2003 through 2007. Frederick County has been unable to restore all records from database backups. Without complete records, Frederick County cannot confirm that all BMPs are inspected at least triennially. For example, for the Stonebridge Regional Shallow Marsh Pond (BMP ID 1), while an inspection was scheduled for 2005, there is no record of an inspection between 2002 and 2007. Additionally, for Tranquility (BMP ID 24), there is no record of any inspection occurring between 1999 and 2008. For the Potomac Station Regional Retention Pond (BMP ID 7), there is no record of any inspection occurring prior to 2011, even though the BMP was built in 1992. See Exhibit 1 in Appendix 4 for the BMP inspection records. It is unclear whether inspections did not occur or if the records were lost.

As of August 6, 2012, the County had updated the Hansen system to include all relevant fields for BMP inspections and transitioned to using only the Hansen system to track new inspections and is transferring old inspection records into Hansen as time allows and as new inspections become due. Currently 250 of the 731 BMPs in Frederick County have been entered into the Hansen system.

**Part III.E.2. (Illicit Discharge Detection and Elimination)** – Part III.E.2 of the Permit requires that the permittee shall maintain its illicit connection detection and elimination program. At a minimum, the Permittee must ensure that all discharges to the MS4 that are not composed entirely of stormwater are either permitted by MDE or eliminated. The permittee must also screen 150 outfalls and sample any discharges at the outfalls using a chemical test kit. The permittee must also report annually the results of field screening activities on MDE's illicit connection detection database. Additionally, the Permittee must identify all County-owned facilities requiring an NPDES discharge permit and submit documentation that a permit has been obtained for each facility. The implementation status of pollution prevention plans for County-owned facilities are required to be submitted in the County's annual report.

Observation 2: Dry weather screening of outfalls is associated with existing SWM facilities (e.g., stormwater ponds) and outfalls are therefore not necessarily selected based on high-risk such as commercial or industrial activities. In 2011, Frederick County conducted field screening of 274 outfalls or stormwater management structures for dry weather flows, however only 104 of the outfalls or structures (approximately 40 percent) are associated with stormwater runoff from commercial and industrial areas (see Exhibit 2 in Appendix 4). The remaining screened outfalls are associated with residential areas or institutional areas such as schools, churches and athletic fields.

Observation 3: Frederick County has contracted with Versar, a company specializing in field screening, to conduct field screening when a dry weather flow is discovered. Because Versar is conducting field screening on a regular basis for a variety of similar type programs, they are familiar with the use of field sampling and analysis methods.

Observation 4: Frederick County inspectors are not contacting Versar to conduct sampling and field screening on every occasion when flow is observed. For example, according to the Access database, dry weather flow was observed on three separate occasions leaving Pond B at the Stanford Business Park; however, no field screening was conducted by Versar (see Exhibit 3 in Appendix 4). During the inspection conducted with the EPA Inspection Team on April 24, 2012, flow was again observed entering Pond B; however, a rain event had occurred with 48 hours of the inspection. The flow entering Pond B appears to originate from a property currently being operated by CINTAS, an industrial laundry (see Photographs 1 and 2 in Appendix 5). Frederick County inspectors stated they would perform another inspection of Pond B later in the week and if flow was still observed, then Versar would be contacted and chemical testing performed.

Another similar issue was identified in Frederick County's inspection documentation which showed a dry weather flow observed at Creekside Park H.O.A. – c/o Kent Briddell Construction, Inc. in December 2009; however, no field testing of the dry weather flow was conducted (see Exhibit 3 of Appendix 4).

Observation 5: Frederick County inspectors are not examining inflow points into SWM facilities to determine if illicit discharges are occurring. Frederick County inspectors stated they are making observations of the outfall from stormwater facilities, but generally are not making observations to determine if water is flowing into the facility. During dry weather periods, water levels in structures such as ponds may be below overflow structures at outfalls, and therefore no flow may be leaving the structure, even though dry weather discharges may be entering the structure. MDE's Review of Frederick County's 2008 Annual Report also made a similar observation, stating that at a minimum, the inflow points to stormwater facilities should be inspected during triennial inspections in addition to outflows to comply with Part E.2.b.

Observation 6: Table 6-1 of the Frederick County 2011 NPDES MS4 Permit MD0068357 Annual Report (Annual Report) shows a number of stormwater pollution prevention plans (SWPPPs) for Frederick County-owned properties were still in progress, even though some had been initially permitted by MDE as far back as 2005. For example, the Frederick Highway Operations Facility was issued a stormwater permit from MDE on March 8, 2005; however, as of December 31, 2011 the SWPPP was still in progress.

Permits for three satellite highway maintenance facilities were issued in December 2004; however the SWPPPs for these facilities were still in progress as of December 31, 2011 (see Exhibit 4 of Appendix 4).

- Observation 7: SWPPPs for county-owned properties have not been fully implemented. Personnel from the Frederick County CDD stated that although the SWPPPs have been recently finalized, the annual and quarterly inspections have not yet been initiated. During walk-through inspections of County-owned facilities by the EPA Inspection Team on April 24, 2012, a number of issues were identified which could have been corrected if inspections were being conducted. For example, an overfilled tote containing spent engine coolant was discovered outside the maintenance shop at the Hayward Road Bus Lot, along with an open-top 55-gallon drum containing oily metal parts (see Photographs 3 through 5, Appendix 5).
- Observation 8: At County-owned facilities where SWPPPs were completed prior to December 2011, inspection data is not available. For example, when the EPA Inspection Team requested stormwater inspection records for the Reich's Ford Landfill which was originally permitted in 1992, it was learned that inspections have not been conducted and no documentation was available.
- Observation 9: Industrial stormwater inspector training for those individuals responsible for SWPPP implementation at county-owned properties has not been provided. General stormwater awareness training for all employees working at county-owned properties has not been provided. Based on discussions with Frederick County and their contactor, Versar, the County is currently in the process of identifying the types of training needed for employees, and will be developing and providing that training next few months.

**Part III.E.4. (Erosion and Sediment Control)** – Part III.E.4 of the Permit requires that the Permittee maintain an acceptable erosion and sediment control program. At a minimum, the Permittee must address needed program improvements identified during MDE's evaluation of the permittee's application for the delegation of erosion and sediment control enforcement authority. Additionally, the Permittee must conduct responsible personnel certification classes to educate construction site operators regarding erosion and sediment control compliance at least twice per year, and record the activity on MDE's green card database. Finally, beginning on September 11, 2002, the Permittee must report information on a quarterly basis regarding earth disturbances of five acres or more. Beginning on August 5, 2003, this requirement changed to regarding earth disturbances of one acre or more.

Frederick County has implemented an ongoing online training course for construction site operators. Interested parties can download the class and submit the test at their leisure. Frederick County found that the online course resulted in reduced staff time requirements and an increase in class attendees and certified operators. The County issued 45 certifications in 2011.

Observation 10: Frederick County makes erosion and sediment control inspection results publicly available through their website. Since 2002, Frederick County has tracked erosion and sediment control inspections in the Hansen system. Once inspection reports are entered into the county's Hansen system, the reports are uploaded to the Hansen Connect system, which allows public access to the construction site inspection records from Frederick County's Permit Portal website. The records can be accessed by entering the site's permit number (AP#) and following the instructions provided in Exhibit 5 of Appendix 4.

Observation 11: Frederick County does not have a formal training process for new construction inspectors. After losing a veteran inspector in 2011, Frederick County hired a part-time inspector. While the inspector had previous related experience, the inspector had not been formally trained in BMP and construction site inspections. The inspector received on-the-job training. Frederick County has a standard operating procedure (SOP) for inspection report writing, enforcement and prioritization of construction site inspections (see Exhibit 6 in Appendix 4); however, the inspector did not always follow the SOP in regards to escalating enforcement. For example, at the Hebron Christian Church construction site (AP# 78838), the inspector identified repeated issues with stockpiles and silt fencing three separate times and marked each inspection status as "passed". Upon the fourth inspection where the same issues were observed, the inspector issued a "failed" status (see Exhibit 7 of Appendix 4). The SOP states that the identification of any erosion and sediment control issues constitutes a failed inspection. The inspector supervisor stated that the incorrect inspection status was the result of a training issue.

Similarly, for the Ijamsville Road public construction site, email documentation between Frederick County staff and MDE shows that numerous sediment control issues were identified on site between November and December 2011. An email dated December 9, 2011 states "no more work (excavation) is to be completed until sediment controls are installed" (see Exhibit 8 of Appendix 4). However, all inspection reports during this time frame show an inspection status of "passed" (see Exhibit 9 in Appendix 4).

Observation 12: Frederick County is not thoroughly inspecting and conducting follow-up and enforcement at all construction sites. On April 25, 2012, the EPA Inspection Team visited the Windsor Knolls construction sites, located at 3328 Winmoor Drive, Ijamsville, MD, along with Frederick County staff. Frederick County manages Windsor Knolls as two adjacent sites. One site is the subdivision area which has been split into individual lots (AP# 93027). The second site primarily consists of a sediment basin (AP# 87193). The majority of each site is stabilized but there is active construction on some of the individual lots. During the visit conducted with the EPA Inspection Team, significant rill erosion along the banks of

the sediment basin was observed (see Photographs 6 through 8 of Appendix 5). While the inspector had inspected the subdivision area at least once per month in 2011, the inspector had not inspected the sediment basin area since January 23, 2012. The inspector had noted the erosion problems and marked the inspection status as failed for the past three inspections at the site on December 2, 2011, December 28, 2011, and January 23, 2012 (see Exhibit 10 in Appendix 4). After the EPA Inspection Team's visit, the inspector conducted inspections on May 3, 2012 and May 16, 2012 and proposed a course of action to resolve the issues. The inspector noted the rill erosion had been repaired in his June 28, 2012 inspection report (see Exhibit 11 of Appendix 4).

Observation 13: Frederick County does not have standard operating procedures (SOPs) for using the Hansen system for plan review or inspection reporting. The Hansen system is used for many activities across the county. The system has been tailored to accommodate each activity, resulting in a large number of codes to be used to record work types and inspections. There are 3,136 default comments a user can select when entering information into Hansen. More than one code or comment may apply to a situation, and therefore, two users may record the same issue in two different ways, which could lead to tracking issues. While the County's Hansen Information Technologies Department has developed manuals used by the Intake Department for entering and managing activities in the Hansen system, no similar manuals or SOPs are available for plan reviewers and inspectors detailing which codes should be used to describe common plan review or inspection findings.

**Part III.E.6. (Road Maintenance)** – Part III.E.6 of the Permit requires that the Permittee develop and implement a plan to reduce pollutants associated with road maintenance activities. At a minimum, the Permittee must document that they are cleaning inlets; reducing the use of pesticides, herbicides, fertilizers, and other pollutants associated with roadside vegetative management practices through the use of integrated pest management; and controlling the overuse of winter weather deicing materials through continual testing and improvement of materials and effective decision making.

Observation 14: An SOP for controlling excessive use of deicing materials is available; however, in the area down-gradient of the salt barn at the Frederick Highway Operations Facility, salt-impacted vegetation had been removed and new mulch/seed mats had been added (see Photograph 9 of Appendix 5).

**Part III.F. (Watershed Restoration)** - The Permit requires Frederick County to continue its systematic assessment of water quality within its watersheds and to target restoration efforts in those areas where opportunities to improve water quality are significant and where prior restoration efforts have been insufficient to meet goals established by the county.

Observation 15: Frederick County has developed watershed assessments for approximately

60% of the County. The County also develops restoration assessments and retrofit/restoration reports which focus on engineering and practical issues related to stream restoration and BMP retrofits. Restoration strategies for the Upper and Lower Monocacy River Watershed have been recognized by the state and EPA. The County has implemented stream restoration in the Ballenger Creek and Linganore watersheds. Additionally, Frederick County has installed bioretention facilities at a school which previously only had a stormwater quantity pond. Water quality monitoring results from the bioretention facility will be used as a teaching tool.



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**HARFORD COUNTY  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4)  
AUDIT**

**HARFORD COUNTY  
DEPARTMENT OF PUBLIC WORKS  
220 SOUTH MAIN STREET  
BEL AIR, MD 21014**

**FINAL  
MARCH 2010**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**

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## EXECUTIVE SUMMARY

### Municipal Separate Storm Sewer System (MS4) Audit Report Harford County, Maryland

On May 20-21, 2009, a compliance inspection team comprising staff from EPA Region 3, Maryland Department of the Environment (MDE), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the Harford County, Maryland municipal separate storm sewer system (MS4) program. Discharges from the County's MS4 are regulated by MDE National Pollution Discharge Elimination System (NPDES) Permit Number MD0068268, effective November 1, 2004. The purpose of this inspection was to evaluate compliance with the County's Permit MD0068268, which is included in Attachment 1. The inspection focused specifically on the following sections of the Permit in relation to the County's MS4 program: (1) Stormwater Management; (2) Illicit Discharge Detection and Elimination; (3) County Property Management; (4) Public Education; (5) Assessment of Controls; and (6) Watershed Assessment, Planning, and Restoration.

EPA's compliance inspection team made several observations concerning the County's MS4 program related to the specific permit requirements evaluated. Table 1 summarizes the Permit requirements and the observations noted by the inspection team.

**Table 1. Observations Identified During the Harford County Inspection (5/20/09 – 5/21/09)**

Maryland Permit Number MD0068268 Requirement	Observations
III.E.1 – Stormwater Management	<p>Observation 1. Harford County does not document and track stormwater plan review comments and procedures</p> <p>Observation 2. Harford County inspectors did not verify pond storage capacity during inspections</p> <p>Observation 3. Harford County does not require sufficient sequencing notes on design drawings</p> <p>Observation 4. Harford County does not evaluate the transition between active-construction BMPs and post-construction BMPs</p>
III.E.3 – Illicit Discharge Detection and Elimination	<p>Observation 5. Harford County's program does not fully address illicit discharges, illegal dumping and spills</p> <p>Observation 6. Harford County did not develop a standard operating procedure for documenting, reporting, tracking, and conducting adequate follow-up of potential illicit discharges or other pollutant sources</p> <p>Observation 7. Harford County did not focus on hotspots in commercial and industrial survey location selection</p> <p>Observation 8. Harford County did not provide training or direction to county personnel and field staff for detecting and eliminating illicit discharges and improper disposal</p>
III.E.4 – County Property Management	<p>Observation 9. Harford County did not track and obtain NPDES industrial stormwater permit coverage</p> <p>Observation 10. Harford County did not develop and implement pollution prevention plans</p> <p>Observation 11. Harford County did not provide oversight of County property requiring NPDES permit coverage</p>

**Table 1. Observations Identified During the Harford County Inspection (5/20/09 – 5/21/09)**

<b>Maryland Permit Number MD0068268 Requirement</b>	<b>Observations</b>
III.E.6 – Public Education	Observation 12. Harford County does not evaluate the effectiveness of its program in reaching the design community with outreach efforts Observation 13. Harford County does not provide outreach and education regarding illicit discharge detection and elimination
III.H – Assessment of Controls	No inconsistencies noted with this portion of the Permit
III.G – Watershed Assessment, Planning, and Restoration	Observation 14. Harford County is not restoring or treating 20 percent of the County's impervious area

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## I. INTRODUCTION

On May 20-21, 2009, a compliance inspection team comprising staff from EPA Region 3, Maryland Department of Environment (MDE), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the Harford County, Maryland (hereafter, the County) municipal separate storm sewer system (MS4) program. The purpose of this inspection was to evaluate compliance with the County's National Pollutant Discharge Elimination System (NPDES) Permit Number MD0068268 (hereafter, the Permit), which is included in Attachment 1. The following personnel participated in this inspection:

Harford County Department of Public Works<sup>1</sup>: Mr. Hudson Myers III, Deputy Director, Department of Public Works (DPW)

Ms. Christine Buckley, Chief, DPW, Bureau of Water Resources

Ms. Betsy Weisengoff, DPW, Bureau of Water Resources

Ms. Christy Joyce, DPW, Bureau of Water Resources

Mr. R. Bruce Appell, DPW, Bureau of Water Resources

Ms. Renee Baumgardner, DPW, Bureau of Water Resources

Ms. Doborah V. Lewis, DPW, Bureau of Water Resources

Ms. Michele Dobson, DPW, Bureau of Water Resources

Ms. Janey Crane, DPW, Bureau of Water Resources

EPA Representatives: Mr. Charles Schadel, EPA Region 3  
Mr. Mark Zolandz, EPA Region 3

Maryland Department of the Environment Representative: Mr. Richard Trickett, Water Management Administration

EPA Contractors: Ms. Lisa Biddle, ERG  
Mr. Mark Briggs, ERG  
Mr. Max Kuker, PG Environmental, LLC

The inspection focused specifically on the following sections of the Permit in relation to the County's MS4 program: (1) Stormwater Management; (2) Illicit Discharge Detection and Elimination; (3) County Property Management; (4) Public Education; (5) Assessment of Controls; and (6) Watershed Assessment, Planning, and Restoration. During the inspection (office interviews and field visits), other sections of the Permit were briefly reviewed but were not completely evaluated.

Section II of this report presents background information on Harford County's MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated, and Section IV presents additional information obtained during the inspection.

## II. HARFORD COUNTY BACKGROUND

Harford County is located in the northeastern part of Maryland and encompasses approximately 369 square miles of land. According to the U.S. Census Bureau, Harford County had an estimated population of 240,351 in 2008. The County consists of extensive rural and agricultural areas; however the southern portion of the County is rapidly becoming urbanized. The City of Aberdeen, City of Havre de Grace, and Town of Bel Air are the only separate incorporated municipalities within Harford County; the County does not have authority over the storm drain systems in these localities.

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<sup>1</sup> County organizational charts and a copy of sign-sheets containing the names of all county participants in the inspection are included as Attachments 2 and 3.

Harford County's stream networks fall in four major watersheds: the Lower Susquehanna River Sub-basin, the Upper Chesapeake Bay, the Little Gunpowder Falls, and the Bush River Basin. Hydrologically, approximately 40 percent of the County drains easterly to the Susquehanna River, 10 percent southwesterly to the Gunpowder River, 30 percent southeasterly to the Bush River, and the remaining 20 percent directly to the Chesapeake Bay. All of Harford county's watersheds were listed as impacted by nonpoint source pollution in MDE's 1989 *Nonpoint source Assessment Report*.

Harford County's MS4 program is administered primarily by the Department of Public Works (DPW) through two of the four DPW divisions:

- Division of Highways and Water Resources; and
- Division of Construction Management.

During the inspection, County personnel provided organization charts identifying the responsibilities of each division and their bureaus (see Attachment 3).

### **III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS**

The EPA inspection team obtained information to evaluate Harford County's compliance with the requirements of the Permit, under which the County's MS4 system is covered. The Permit, included in Attachment 1, has an effective date of 1 November 2004 and an expiration date of 1 November 2009. The EPA inspection team evaluated six permit components; observations regarding the County's implementation of each permit component are presented in the following six subsections. Attachment 4, the Exhibit Log, contains all referenced exhibits, and Attachment 5, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record).

#### **A. Requirement III.E.1 – Stormwater Management**

Part III.E.1 of the Permit addresses requirements for the post-construction stormwater management program. Harford County's Stormwater Management program is implemented by DPW; the program components related to this section of the permit are discussed below.

##### **1. Design Requirements and Review**

Part III.E.1.b of the Permit requires the County to "Implement the stormwater management design policies, principles, methods, and practices found in the *2000 Maryland Stormwater Design Manual*." The program is administered according to Chapter 214, Article II of the Harford County Code, *Stormwater Quantity and Quality Management* (2002); Exhibit 1 includes a copy of Article II. The Code requires that post construction stormwater management be provided for all non-agricultural projects that disturb more than 5,000 square feet; exceptions to this requirement are described further below under Waivers, "Fees in lieu of" Program, and Variances. Stormwater quantity and quality design requirements in Harford County are consistent with the Maryland Stormwater Design Manual. During the inspection, the County indicated that stormwater management plans must be approved by May 4, 2010, and construction started within two years, in order to fall under the 2000 Maryland Design Manual. After May 4, 2010, stormwater management designs must be consistent with the revised Design Manual, which incorporates the Maryland Stormwater Management Act of 2007 with a greater focus on environmental site design and smaller, decentralized stormwater management strategies.

Designs are submitted to the Department of Planning and Zoning where they are logged into a database. The Bureau of Water Resources (Water Resources), within the Division of Highways and Water



Resources, reviews the design drawings for stormwater management. All design reviews conducted by Water Resources are performed by the lead reviewer and one junior staff member.

Three sets of design drawings are reviewed by Water Resources before a project design is considered complete. Preliminary drawings are reviewed for stormwater management planning and siting considerations and to identify outfalls that may be a concern. When more developed construction drawings are submitted, Water Resources reviews drainage hydrology and hydraulic calculations as well as maintenance schedules for post construction stormwater management practices. The lead Water Resources design reviewer meets with the design engineer to go over his comments when they are returned for revision; he indicated that this occurs approximately one-third of the time. The third set of design submittals that are reviewed by Water Resources is the as-built drawings. When as-built drawings are approved by Water Resources, the post construction stormwater management practice, or best management practice (BMP), is entered in the County's BMP database and a form is completed and submitted to the post construction inspection team. As-built drawings must be approved by Water Resources before an as-built field inspection will be initiated by the County (post construction inspections are discussed in the next section).

There are approximately 300 BMPs in Harford County's current inventory, Table 1 summarizes data from Harford County's 2007 database of BMPs indicating the count of each BMP type in the County's inventory for calendar years 2005, 2006, and 2007.

**Table 1. Summary of Stormwater Implementation Information for the Previous Three Years  
(Provided in 2007 Annual Report Database)**

BMP	2005	2006	2007
Pond	23	28	31
Wetland	3	1	9
Infiltration	6	4	1
Filter	7	14	22
Open Channel	4	0	0
Other	10	2	10
Non-structural	213	154	62
Channel protection	32	19	19
10-year management	45	37	46

Each set of drawings submitted to Planning and Zoning is logged into a database and Water Resources receives a target review and response date, set for 30 working days after receipt. The lead Water Resources design reviewer indicated that they typically review 30 plans per month and this rate allows them to review at least 90 percent of the drawings submitted for review within the 30 working day window.

There are no standard operating procedures (SOPs) or checklists for Water Resources' design reviews. Review comments are provided in red on the hard copy drawings and no record of these comments or copy of the drawings are kept or tracked by Water Resources, though they are supposed to be included with the revised set of drawings when they are resubmitted to the County. Water Resources documents completed reviews by logging review dates in the database.

### ***Stormwater Bonds***

Most construction projects with stormwater components in Harford County are required to have a stormwater bond. The bond value is equal to the construction cost for the post construction BMP(s). The bond is partially released once the as-built drawings are approved and the as-built Inspection has been completed; however ten percent of the bond value is retained for one year to ensure proper maintenance is performed. After the facility is deemed satisfactory by the County from a second field inspection (completed one year after construction was completed), the entire bond is released. The County may use the bond to leverage against the property owner to ensure construction and maintenance is performed per design, this is illustrated in the example correspondence provided in Exhibit 2.

The County indicated that they do not currently bond small-scale BMPs, such as those that are emphasized in the revised Design Manual. These design components are reviewed during the design review process, but bonds are not required for them at this time. The County may need to consider a bonding approach for these practices in the future as the changes to the Design Manual are expected to transform design approaches toward many small BMPs rather than one or two large ponds, therefore rendering the small-scale practice critical to stormwater management compliance.

### ***Maintenance Agreements***

The majority of the BMPs in Harford County are privately owned; to insure these facilities are maintained properly, Harford County enters into a Maintenance Agreement with the owner. The Maintenance Agreement requires that the owner, and the owner's successors, "maintain in good condition and properly repair and restore all ground surfaces, walls, drains, dams, and structures, vegetation, erosion and sediment control measures, and other protective devices for the Stormwater Management Systems." It goes on to state that the owner shall perform "preventative maintenance on all completed Stormwater Management Systems to insure their proper functioning, including, but not limited to, the maintenance schedule for the Stormwater Management System or Systems as noted on the Stormwater Management Plan." The agreement also states that "The County shall inspect all Systems during the first year of operation and at least once every three (3) years thereafter." Also, if the owner fails to maintain the system within 30 days after proper written notice from the County, the Maintenance Agreement authorizes the County to perform the necessary maintenance or repairs and assess a lien against the property or property tax bill for the cost of the work and any applicable penalties. Exhibit 3A contains a blank Maintenance Agreement and Exhibit 3B contains a complete Maintenance Agreement for a private BMP facility.

The County also uses maintenance agreements for retrofit projects; these agreements may be the same as those for new construction on private property (repair and maintenance responsibilities lie with the property owner), or they may be set up for shared maintenance between the County and the property owner. An example Maintenance Agreement from a retrofit project is included as Exhibit 3C.

Harford County is responsible for maintenance of all County-owned BMPs. A summary of the County owned BMP inventory is provided as Exhibit 4.

### ***Waivers***

According to Section 214-28 of the Harford County Code for Stormwater Quantity and Quality Management (Exhibit 1), the County may issue stormwater management qualitative control and quantitative control waivers if various criteria are met. All waivers are decided on a case-by-case basis. Harford County tracks waivers in the plan review database and in Water Resource's GIS data; however there is no checklist or SOP documenting the review and approval process for waivers.



According to Section 28 of the County Code, waivers for stormwater management quantitative control may apply to projects where a watershed management plan has been developed or projects:

- That have direct discharges to tidally influenced receiving waters; or
- When the Department determines that circumstances exist that prevent the reasonable implementation of quantity control practices, provided one of the following requirements is satisfied:
  - Fees in lieu of (\$1.00 per square foot of impervious area);
  - Off-site BMP implementation for a drainage area comparable in size and percent of increased imperviousness to that of the project;
  - Watershed or stream restoration;
  - Retrofitting; or
  - Other practices approved by the Department.
- Where underground utilities are to be installed and the existing drainage patterns will not be changed and there is no increase in impervious area.

Stormwater management qualitative control waivers may apply to:

- In-fill development projects where the Department has determined stormwater management implementation is not feasible provided one of the following requirements is satisfied:
  - Fees in lieu of (\$1.00 per square foot of impervious area);
  - Off-site BMP implementation for a drainage area comparable in size and percent of increased imperviousness to that of the project;
  - Watershed or stream restoration;
  - Retrofitting; or
  - Other practices approved by the Department.
- Sites where the Department determines that circumstances exist that prevent the reasonable implementation of quality control practices, provided one of the following requirements is satisfied:
  - Fees in lieu of (\$1.00 per square foot of impervious area);
  - Off-site BMP implementation for a drainage area comparable in size and percent of increased imperviousness to that of the project;
  - Watershed or stream restoration;
  - Retrofitting; or
  - Other practices approved by the Department.
- Where underground utilities are to be installed and the existing drainage patterns will not be changed and there is no increase in impervious area.

### ***“Fees In Lieu Of” Program***

Harford County’s “fees in lieu of” program is not documented by an SOP, but was described by the County as a means by which construction of post construction stormwater management BMPs can be avoided when there are extenuating circumstances which make BMP construction infeasible. “Fees in lieu of” may be applied in place of water quality requirements, water quantity requirements, or both. The fee is \$1.00 per square foot of impervious surface; if the fee is applied in place of both quantity and quality

control then it is \$2.00 per square foot. The County explained that extenuating circumstances might be physical constraints, such as a high ground water table, insufficient space in highly developed areas, or in sufficient slope for conveyance to an outfall. According to the County Code, money collected as fees in lieu of “shall be used only to fund the investigation, design, construction, or maintenance of projects for quantitative or qualitative stormwater management or stream restoration.”

### ***Variances***

The County may grant variances from any requirement of stormwater management criteria if there are exceptional circumstances applicable to the site such that strict adherence will result in unnecessary hardship and not fulfill the intent of the article (Harford County Code, Chapter 214 – Section 30). The County indicated that variances are not tracked and there is no written SOP or checklist that is followed for granting variances. However the County did indicate that they grant very few variances, approximately three annually.

Table 2 summarizes stormwater design review and exemptions recorded by the County for calendar years 2005, 2006, and 2007.

**Table 2. Summary of Stormwater Programmatic Information for the Previous Three Years  
(Provided in 2007 Annual Report Database)**

	2005	2006	2007
Number of new development projects received	47	83	74
Number of redevelopment projects received	8	10	7
Number of stormwater exemptions issued	1	4	3
Number of Stormwater Waivers Issued For 10-year management	15	16	10
Number of Stormwater Waivers Issued For 2-year management	0	0	0
Number of Stormwater Waivers Issued For channel protection	15	15	10
Number of Stormwater Waivers Issued For redevelopment	0	1	0
Number of Stormwater Waivers Issued For quality management	14	14	10
Number of fees-in-lieu approved	15	17	13
Amount of fees-in-lieu collected	\$196,717	\$252,952	\$165,365

### **Observation 1. Harford County does not document and track stormwater plan review comments and procedures**

Although it is not a specific permit requirement, it was observed that Harford County does not document the plan review comments and procedures. The County did not have checklists and/or SOPs for issuing waivers and exemptions, “fee in lieu of”, and variances. Also, a tracking procedure was not in place that would retain a copy of all comments provided to the permittee’s engineers/designers with the County when plans are returned to engineers/designers, instead the current practice involves marking the comments directly on plans and sending them back to the designer.

## **2. Post-Construction Inspections**

Part III.E.1.a of the Permit requires the County to “Conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis.” It also requires that the County document the “facilities inspected, the number of maintenance inspections, the enforcement actions used to ensure compliance, and the maintenance inspection schedules” in the annual report. The County conducts the



triennial inspections in accordance with the permit requirements; this process is described in greater detail below. Table 3 summarizes the annual reporting related to these inspections.

**Table 3. Summary of Inspection Data Presented in the 2006 and 2007 Annual Reports**

	2006	2007
Number of facilities inspected for preventative maintenance	474	274
Number of inspected facilities found to be in compliance	204	107
Total number of maintenance inspections conducted <sup>1</sup>	941	372
Number of facilities that were as-built inspected	data not provided	69
Number of as-built sites found to be in accordance with the stormwater management plans	41	52
Total number of as-built inspections performed	87	121
Total number of field meetings conducted with contractors, management companies, and developers	129	109
Number of Homeowners' Association meetings to discuss maintenance requirements	6	6

<sup>1</sup> The 2006 Annual Report noted that there was an increase in the number of inspections performed due to the hiring of two temporary staff through the beginning of 2007. Turn over of temporary staff continues to be problematic for the County.

Two types of post construction stormwater management BMP inspections are performed by the County: as-built inspections and preventative maintenance inspections. As-built inspections are performed by the County before final construction approval and bond release (only 90 percent of the bond is released with initial construction approval, as described above). One year after final construction approval, a maintenance inspection is performed. Once the facility passes inspection, the remaining bond amount (10 percent) is released. At that point, the facility is put on a triennial preventative maintenance inspection schedule.

Stormwater inspections are performed within Water Resources by one lead inspector and one junior staff member, with the help of seasonal interns. The inventory of inspections that are due in calendar year 2009 (as of May 4, 2009) is included as Exhibit 5; there are 92 records in the inventory.

In addition to inspecting BMPs in the unincorporated Harford County, Water Resources also performs BMP inspections for the town of Bel Air, though Bel Air handles their own enforcement. The County has no inspection or enforcement responsibilities for the BMPs in the City of Aberdeen or the City of Havre de Grace.

The lead inspector performs all of the as-built inspections and many of the maintenance inspections though she is training the junior inspector to focus on maintenance inspections. The lead inspector indicated that she completes approximately 10 inspections per week and the junior staff member, with the help of interns, completes an average of 25 maintenance inspections per week. Inspections are performed according to a checklist ("Dam Inspection Checklist," Exhibit 6A) and a worksheet (Stormwater Management Worksheet, Exhibit 6B). As-built inspections also involve comparing the constructed BMPs with the as-built drawings. An example as-built package that would be used during an inspection is included as Exhibit 7.

Once an inspection is complete a report is generated and sent to the owner via e-mail. The report will include any required maintenance or repairs that were noted during the inspection and contact information for the County so that the owner can notify the County when maintenance or repairs have been

completed. Depending on severity of the maintenance or repair issue that is sited in the inspection, the County may require action within 30-days, or allow more time as long as progress is planned or being made, and reported to the County regularly.

The lead inspector explained that facilities that do not provide a status update, or proof that the required maintenance or repair has been done, are contacted by the County, first via e-mail or regular mail, then, if no response is received, via certified mail. Correspondence and progress updates are tracked in the inspections database. The lead inspector indicated that in some cases it may take up to a year for the needed maintenance or repair to be completed, but that the owners do typically cooperate in the end. When an owner does not cooperate, the case is taken to court and the County may claim the stormwater bond in order to fund the needed maintenance or repair activities. The County indicated that these steps are not documented in an SOP; however, the inspections database outlines the process. The County estimated that approximately 20 cases had to be taken to court over the past five years.

An example from the Stormwater Management Inspections Database was provided by the County (Exhibit 8). This example illustrates the County's procedure to return to the BMP after maintenance is requested of the owner to determine if it has been performed. This is planned for by the inspector by manually entering the "Next Inspection" date in the database. The inspectors typically set the date to return approximately one month after the initial inspection. Follow-on activities are scheduled as updates are received from the owner, or new field observations are made. The exhibit includes the form letter or report that is generated from the database and sent to the owner (this example is for the last inspection in the series, indicating repairs have been completed to the County's satisfaction). It should be noted that although re-inspection is not required more than every three years (per the Permit), the County typically schedules re-inspections for two years later.

### **3. Post-construction BMP Site Visits**

On May 21, 2009, the inspection team witnessed four inspections performed by Harford County – two triennial inspections (one public and one private) and two as-built inspections (one public and one private); these are described below. All referenced photographs are contained in Attachment 5, Photograph Log.

#### ***Site: Winters Run Manor***

Photographs 1 through 7 in Attachment 5 were taken at this private residential site, which consists of a large stormwater management pond for control and treatment of runoff from the residential development. The stormwater pond at Winters Run Manor is managed by the homeowners association. The inspection team witnessed a County triennial inspection of this facility. The stormwater management facility included a large wet pond with inlet and outlet structures with an influent water quality bay (Photographs 1 and 2). During the inspection the County inspector walked the entire pond perimeter, inspecting vegetation health and depth, inlet and outlet structures, fence integrity, and the overall appearance of the water and health of flora and fauna in the pond.

The following repair and maintenance needs were noted by the County inspector during this inspection:

- Slope failure on the uphill influent side of the water quality bay (Photograph 3);
- Erosion and sediment deposition in the water quality bay (Photograph 4);
- Obstruction of the pond outfall pipe with debris and sediment (Photograph 5);
- Possible seepage into the outfall structure through concrete walls (Photograph 6); and
- Overgrown vegetation in the path of the outfall to the receiving stream (Photograph 7).

The inspector indicated that due to the presence of tadpoles, and lack of mosquitoes and algae blooms, the pond was healthy and not suffering from over-fertilization. The inspector stated that she does not typically check sediment levels in the ponds during these inspections unless an obvious issue is observed.

***Site: Detention Center***

Photographs 8 through 10 in Attachment 5 were taken at this publicly owned site, which consists of a stormwater management wet pond for control and treatment of runoff from the Harford County-owned detention center (Photograph 8). The inspection team witnessed a County as-built inspection of this facility which was recently retrofitted to a wet pond from its previous use as a dry pond. The inspector noted that the vegetated bench was constructed in agreement with the as-built drawings and was in satisfactory condition. Tadpoles in the pond were noted as a sign of good water quality and proper fertilizer levels in the surrounding vegetation. The only major concern noted by the inspector was that the riser structure lacked proper bolts to attach the two precast concrete pieces together, as well as to attach the trash rack to the concrete (Photographs 9 and 10).

***Site: Hickory II***

Photographs 11 through 15 in Attachment 5 were taken at this publicly owned site, which consists of a stormwater management wet pond for control and treatment of runoff from the Harford County-owned maintenance, fueling, and materials storage facility (Photographs 11 and 12). This facility is described in greater detail in Section C. This facility had recently received a triennial inspection from Harford County's junior inspector. The junior inspector's report had noted no issues for follow-up. The lead inspector indicated that she will periodically visit those sites at which the junior inspector has performed triennial inspections to provide quality assurance and review of his work. During the inspection, the lead inspector noted several issues that the junior inspector failed to note in his report.

The following repair and maintenance needs were noted during this site visit:

- Vegetated banks of the pond need to be mowed (Photograph 13);
- The banks need to be weeded, the inspector noted Canadian Thistle (an invasive species) growing on the vegetated bank (Photographs 14 and 15);
- Sediment needs to be removed from the pond as a loss of storage was noted (noting the height of water on the cattails the inspector determined that the pond had silted in significantly).

The lead inspector indicated that she would work with the junior inspector to understand the issues he had overlooked at this facility so that they are noted in future inspections.

**Observation 2. Harford County Inspectors did not verify pond storage capacity during inspections**

The inspector indicated that the County inspectors do not typically check sediment depths in the ponds during as-built and maintenance inspections. The lead inspector indicated that if depth has visibly diminished she will note it as a maintenance need; however, there was no standard procedure in place to check the depth during every inspection.

***Site: Grafton Ridge***

Photographs 16 through 19 in Attachment 5 were taken at this privately owned site, which consists of a stormwater management facility for control and treatment of runoff from a new residential development in Harford County. The facility consists of a dry extended detention pond with vegetated pretreatment

forebay and a sand filter (Photograph 16). This was the County's first visit to this site for an as-built inspection. Due to an emergency the County's lead inspector could not accompany the EPA Inspection Team to this last site; however, the lead design reviewer was available and accompanied the team on the final site visit.

Due to improperly timed construction phasing and lack of hillside stabilization, forebay and sand filter portions of the stormwater management facility appeared to be silted in with sediment that had runoff nearby hillsides and construction sites (Photographs 17-19). The Harford County design reviewer commented that these facilities appeared to be silted in to a point beyond repair and would likely have to be re-constructed. In the meantime runoff from this development is not receiving the intended water quality treatment since both the vegetated forebay and the sand filter are clogged, preventing flow from passing through their soil and sand, respectively.

In the approved as-built plans, the Maintenance Schedule (Sheet 6) outlined operations and maintenance requirements. Item 7 states that the forebay and sand filter are to be cleaned when sediment reaches one foot depth. The drawings show a marker that would be used to measure this depth, however no markers were observed in the constructed forebay and sand filter. It was clear that no maintenance had been performed on these facilities and as a result their functionality had been compromised.

**Observation 3. Harford County does not require sufficient sequencing notes on design drawings**

The inspection team observed that the construction sequencing notes on design drawings did not provide sufficient information for the County to ensure that construction is phased in such a way that post-construction stormwater management facilities are not damaged during the construction process.

The County indicated that this facility was dual purpose: portions of the facility were used for active-construction stormwater management, and then it was to be transitioned into a permanent post-construction facility, per the approved as-built drawings. It was clear that the facility was transitioned from active-construction BMP to post-construction BMP too early, compromising the post-construction BMP's functionality.

**Observation 4. Harford County does not evaluate the transition between active-construction BMPs and post-construction BMPs**

Harford County does not examine the gap between construction and post construction BMP use to ensure that construction in the drainage area for any active-construction BMP is 100 percent complete, before the BMP is removed or transitioned to its post-construction purpose. The inspection team noted that it appeared that the transition from construction BMPs to post construction BMPs at Grafton Ridge was not successful, resulting in improperly managed runoff from (still) active-construction areas, and damage to post construction stormwater controls.

**B. Requirement III.E.3 – Illicit Discharge Detection and Elimination**

The County's Illicit Discharge Detection and Elimination (IDDE) program is implemented by several County departments and a county contractor. The County has contracted with EA Engineering, Science, and Technology Inc. (hereafter, EA) to conduct field screening of outfalls, conduct annual surveys of commercial and industrial watersheds (i.e., hotspot investigations), and prepare a written report documenting the results of their activities for reporting to the County and MDE. The County's Water Resources Department is responsible for follow-up activities relating to outfall screening and annual surveys, and response to reports of illicit discharges including illegal dumping. The County's fire department is responsible for spill response activities.

Harford County Code, Article IV (Water Quality), Sections 109-25 through 109-30, appear to provide the County with adequate legal authority control illicit discharges, illegal dumping, and spills and to enforce the County's stormwater management policies.

The EPA inspection team accompanied County and EA personnel to one dry weather field screening location identified as having past indicators of an illicit discharge, three industrial/commercial facilities with indicators of the potential for illicit discharges, and one industrial/commercial facility that the County had previously identified as having illicit discharges or illegal activities or storage during the 2007 field-screening and routine commercial/industrial survey activities. These site visits included a physical review of the sites, a review of the field-screening procedures (conducted by EA), and a review of the documentation completed during the screening and survey process. The following sections describe observations made during the site visits.

***Site: Outfall No. OF002335 – Pulaski Highway at Pine Road, Joppa MD – Dry Weather Field Screening Location***

Photographs 20 through 22 in Attachment 5 were taken at Outfall Number (No.) OF002335 which discharges stormwater to a roadside ditch and is located near the intersection of Pulaski Highway and Pine Road. On September 4, 2007, while performing field screening, EA identified a light flow of water at Outfall No. OF002335. According to EA representatives, field testing was conducted and the flow was determined not to be an illicit discharge as the test results from two separate outfall visits indicated that the flow was most likely groundwater.

The EPA inspection team visited the outfall and noted site conditions similar to those found during the previous two visits by EA and the County (e.g., light flow and needed maintenance). County representatives stated during the site visit that they thought that the roadside ditch was a State Highway Administration outfall and not actually a County outfall. The County provided verification of the statement after the inspection.

***Site: Bud's Car Wash – 1108 S Mountain Rd, Joppa – Potential Illicit Discharge Location***

Photographs 29 through 38 in Attachment 5 were taken at Bud's Car Wash, a self serve car wash located near the intersection of S. Mountain Road and Route 40 (Photograph 23). The Car has two automated and four manual drive-thru covered wash bays and one manual uncovered wash bay. During travel from the County's office to Outfall No. OF002335 on May 20, 2009, the EPA inspection team noted a discharge of wash water from the facility to a storm drain on S. Mountain Road. The EPA inspection team continued to the outfall to observe dry weather screening procedures and returned to the facility upon completion of the activities at the outfall.

When the EPA inspection team arrived at the site, the discharge had ceased and the evidence of the discharge had diminished due to the sunny dry weather conditions; however the EPA inspection team conducted a thorough site review and noted several physical issues at the site. Specifically, the EPA inspection team noted that the grading of the wash bays was fairly flat resulting in a lack of containment of wash water, allowing wash water to flow out of at least one of the bays toward the facility's entrance (Photographs 24 through 26) and subsequently into the storm drain along S. Mountain Road. Other physical issues noted at the site included the placement of a "port-o-pot" on a constructed wooden platform suspended over what appeared to be a County drainage ditch (Photograph 27) and trash and debris evident in the drainage ditch (Photograph 28).

County representatives stated that the facility had not been reviewed during industrial/commercial survey activities nor had they received any illicit discharge complaints from County personnel or the general public.

***Site: Days Truck Center – 1018 Pulaski Highway, Joppa, MD – Potential Illicit Discharge Location***

Photographs 29 through 31 in Attachment 5 were taken at Days Truck Center is a used truck sales lot located adjacent to Bud's Car Wash at the corner of S. Mountain Road and Pulaski Highway. The EPA inspection team conducted a brief visit to the facility to observe a storm drain located in the northeastern corner of the facility. The storm drain was identified during a review of the drainage patterns from Bud's car wash. It appeared that the drain received runoff from the lot only. The EPA inspection team noted that drain was clogged with sediment, and standing water in the drain had an oily sheen (Photographs 29 through 31).

***Site: 1008 Pulaski Highway, Joppa, MD – Potential Illicit Discharge Location***

The EPA inspection team conducted a site visit to an auto detailing and used tire sales facility located at 1008 Pulaski Highway (Photograph 32). Photographs from this site are included as Photographs 32 through 37 in Attachment 5. A Google search on the address provided a facility name of Supreme Auto Works as a facility name was not posted at the site or obtained during the site visit. The facility is located approximately 150 to 200 yards west of Days Truck Center along Pulaski Highway. Stormwater from the facility appears to drain towards Pulaski Highway and into storm drains along the side of the highway.

The EPA inspection team noted several physical issues at the site. Specifically, the EPA inspection team noted pressure washing activities occurring outdoors on an impervious asphalt surface resulting in staining of the surrounding pavement.(Photographs 33 and 34). The EPA inspection team also noted a bucket of used oil stored outdoors with only a small concrete slab resembling a yard paver covering a portion of the top of the bucket (Photographs 35 and 36). The EPA inspection team also noted that the grate on a roadside storm drain located on the property had been removed and placed in the storm drain along with trash and debris (Photograph 37).

***Site: Ace Appliance – 514 Pulaski Highway, Joppa, MD – Commercial and Industrial Survey Facility***

Photographs 38 through 50 in Attachment 5 were taken at Ace Appliance (Photograph 38), which the County identified as an appliance repair and retail facility. Further investigation including conversations with a facility representative indicated the front of the building facing Pulaski Highway was Ace Appliance and that carnival equipment construction and repair activities were occurring behind Ace Appliance, but on the same property. The facility had been identified as a potential hotspot during commercial and industrial survey activities in 2008. County representatives stated and provided documentation that facility representatives had been unresponsive during several attempts to contact the facility.

The EPA inspection team conducted a site visit and noted that the facility appeared to be a significant threat to water quality due to activities associated with construction and repair of carnival equipment and the close proximity to a natural drainage way. Specifically, the EPA inspection team noted storage of numerous petroleum containers with varying amount of product exposed to stormwater (several without lids or other means to prevent contact with stormwater), numerous other hazardous liquid storage containers (i.e., paints and solvents) with varying amounts of product exposed to stormwater, and fluorescent light bulbs stored in an unsafe manner near a natural drainage area (Photograph 39 through 45). Other observations noted include petroleum stains throughout the facility (Photographs 46 and 47), a lack of BMPs to prevent overspray from spray painting activities resulting in paint stains throughout the facility, and possible sand blasting media stored on the ground without BMPs to prevent runoff (Photographs 48 through 50).



***Site: 1009 Pulaski Highway, Joppa, MD – Potential Illicit Discharge Location***

The EPA inspection team conducted a brief site visit to what appeared to be two separate businesses co-located at 1009 Pulaski Highway. The two businesses are “R.G. Washington Used Cars” and “Steves Auto” (Photographs 51 through 53).

The EPA inspection noted that the activities on the property appeared to be a significant threat to water quality due to number and severity of physical issues and close proximity to a natural drainage way. Specifically, the EPA inspection team noted automobile repair activities occurring outdoors; used oil storage containers ranging in size from an approximately 100-gallon tank to numerous 5-gallon containers stored outside without protection from stormwater; metal trash and debris piles; used automobile engines, mufflers, batteries and other automobile parts stored throughout the facility; and an overturned automobile all resulting in petroleum stains throughout the property (Photographs 54 through 65).

**Observation 5. Harford County’s program does not fully address illicit discharges, illegal dumping and spills**

County personnel stated that reports of illicit discharges, illegal dumping and spills may be received by several County departments as the County does not maintain a central number and/or website for citizen or County personnel to report such activities. Further, County personnel stated that formal or informal procedures had not been developed to direct County personnel to the proper County department or State agency for notification of an illicit discharge, illegal dumping, or spill. Also, County personnel indicated that it was not clear what information needed to be provided during the initial notification. Based on conversations with County personnel, a report of an illicit discharge, illegal dumping or a spill could and have been routed to several different County departments and State agencies for follow-up. County representatives further stated that they are only aware of one public report of an illicit discharge in the last five years which indicates that the reports are either not reported to the appropriate department or that public education and outreach is insufficient.

The County did not provide any information regarding illegal dumping and did not provide a complete log of spills. County representatives stated that the spills occurring on roadways are typically handled by the County fire department and that the State Office of Emergency Management is contacted in the event of large-scale spills. According to County representatives, the fire department provides the Water Resources Department with a log of roadway spills (Exhibit 9), but does not provide information regarding the nature of the spill including, if the spill entered the MS4 and if so, the volume of product that entered the MS4, the volume of product recovered from the MS4, or details regarding the clean up or removal of the product from the MS4.

The County did not have County-wide procedures to ensure that reports of illicit discharges, illegal dumping and spills that result in a discharge to the County’s MS4 are routed to the appropriate County department or state agency, are adequately documented and that the initial response and subsequent follow-up (i.e., enforcement action if applicable) is tracked.

**Observation 6. Harford County did not develop a standard operating procedure for documenting, reporting, tracking, and conducting adequate follow-up of potential illicit discharges or other pollutant sources**

The County has not developed a standard operating procedure (SOP) for documenting, reporting, tracking and conducting adequate follow-up of potential illicit discharges or other pollutant sources resulting in the failure to eliminate at least one illicit discharge at Ace Appliance.

The County utilizes EA to conduct commercial and industrial surveys to identify potential illicit discharges from businesses within the county. EA identified Ace Appliance as a potential hotspot location during hotspot site investigations on February 6, 2008. The County failed to complete an adequate response in a timely manner to the Ace Appliance Facility identified as a potential threat to stormwater quality during the industrial/commercial surveys. At the time of the EPA inspection, the issues had been unresolved for a period of greater than 15 months since date of discovery. According to documentation provided, the facility was first identified as a potential hotspot by EA (Exhibit 10) on February 6, 2008. County personnel stated that EA did not notify them of the facility until the Draft summary report for 2007 was provided to the County in August 2008, approximately six months after the initial discovery. According to the County's "Business Inspections" tracking table (excerpt provided in Exhibit 11) the County did not initiate follow-up activities until October 9, 2008, approximately one to two months after original notification. As of the date of the EPA inspection, the County had not resolved the physical issues nor had the County initiated an enforcement action to cease the discharge resulting in the illicit discharge occurring for over 15 months.

**Observation 7. Harford County did not focus on hotspots in commercial and industrial survey location selection**

The County has not evaluated the current site selection method for commercial and industrial surveys or hotspot investigations. The EPA inspection team observed that there were few focused hotspot investigations and/or educational efforts in the several mile long Pulaski Highway industrial area within the County. The EPA inspection team identified and visited four facilities (previously identified) of concern within a very small geographic area (within the Pulaski Highway industrial area) in the matter of approximately two hours. During surveying activities, the County only investigated one facility (Ace Appliance) within the highly industrialized mile long stretch the EPA inspection team visited.

**Observation 8. Harford County did not provide training or direction to county personnel and field staff for detecting and eliminating illicit discharges and improper disposal**

County personnel who have a direct role in the Illicit Discharge Detection and Elimination Program have not received training or direction in how to identify and report conditions in the stormwater facilities that might indicate the presence of illicit discharges to the MS4. During the course of the inspection activities, County staff displayed a general lack of awareness regarding their role in preventing pollution and detecting and eliminating illicit discharges. Specifically, during illicit discharge site visits with County representatives, an illicit discharge was noted by the EPA inspection team that was not noted by the County representatives. The County representatives had not received training or specific direction to identify illicit discharges outside of their primary hotspot and dry weather field screening follow-up responsibilities.

**C. Requirement III.E.4 – County Property Management**

The County's Property Management program element, as specified by the permit, is managed by the County's Water Resources Department. The Water Resource Department is responsible for tracking and reporting activities as required by the permit. The individual County departments responsible for the different types of facilities are responsible for applying for permit coverage and maintaining compliance with the individual and general NPDES permits for their respective facilities. The County reported in their 2007 Annual Report that they had identified 23 facilities that require NPDES permits and/or pollution prevention plans. The County further determined that 12 of the 23 facilities do not require pollution prevention plans due to several reasons (e.g., swimming pool discharges). The EPA inspection team identified several inconsistencies between the County's tracking and documentation of County properties and actual operations of the facilities. Specifically, the EPA inspection team identified three facilities that had not obtained permit coverage under MDE's General Discharge Permit No. 02-SW and

at least two that had not developed the required SWPPPs. A summary of the facilities is provided in Exhibit 12 including permit status, SWPPP status, and comments regarding permit and SWPPP observations. A complete list of Harford County Industrial Permit Holders obtained from MDE is provided as Exhibit 13.

The EPA inspection team accompanied County personnel to two of the County's four Highway maintenance facilities. The site visits included a physical review of the site, review of material-handling practices, and review of the facility-specific stormwater pollution prevention plan (SWPPP) and associated documentation. The following sections include the observations that the EPA inspection team made during the site visits.

***Site: Highway Maintenance – Hickory II Complex at 1807 N. Fountain Green Road, Bel Air, MD***

The Hickory II Complex (complex) covers approximately 22.17 acres and serves as a maintenance, fueling, and materials storage facility. Staff at the complex are responsible for the maintenance and cleaning of roads, alleys, bridges, viaducts, underpasses, drains, and culverts. All vehicle maintenance at the complex is conducted by the County's contractor, First Vehicle, who acts as a tenant at the complex. Materials storage consists of materials such as fuel, salt and deicing fluid, sand, traffic paint, and herbicides. The complex has two administrative/ maintenance buildings, two salt domes, a stockpile area, a fueling station, a leachate tank with delivery area (Photograph 66), two truck/equipment sheds, an oil/water separator, and a water quality marsh. There was on-going construction at the site during the inspection. Construction activities appear were verified to be less than 1 acre as stated in the construction grading permit (Photographs 67 through 69)

A review of permit coverage indicated that stormwater discharges associated with industrial discharges had been obtained under Permit No. 02-SW-1714 and has prepared the required SWPPP for their activities.

According to the complex's industrial SWPPP (Attachment 6), the general vicinity slopes in a southeasterly direction. Stormwater runoff from the salt domes, the parking area, main office truck shed, equipment shed (Photographs 70 and 71) the First Vehicle maintenance area (Photographs 72 through 75) and fuel tank area (Photograph 80), and which flows to an on-site stormwater detention pond (Photographs 81 and 82) and discharges into an unnamed tributary of Thomas Run, a tributary to Deer Creek. The SWPPP further states that runoff which may occur from the Stockpile millings, stone and topsoil area drains to the State Highway Administration pond located along the Hickory Bypass.

The complex's SWPPP was originally prepared in December 2004 and was most recently revised in August 2008. The EPA Inspection Team noted that the SWPPP did not meet the requirements of Discharge Permit No. 02-SW. The SWPPP did not include complex-specific BMP locations, stormwater management pond inspection and maintenance requirements, locations of outfalls, and directions of stormwater flow on the site map. In addition, the plan provided did not contain applicable or adequate documentation of past inspections, employee training, or monitoring. Documentation was provided for a May 15, 2009 inspection (less than one week prior to the EPA inspection) that indicated that no issues of concern were identified.

The SWPPP did not appear entirely accurate as the stockpile millings, stone and topsoil area (Photographs 92 through 96) did not appear to drain to a State Highway Administration pond. Upon review of the information provided in the SWPPP (e.g., Figure 2 - Site Map and Figure 3 – Drainage Map in Attachment 6), it did not appear that a stormwater pond existed in the location specified on the western portion of the site. A review of the area does indicate that a pond does exist along Hickory Bypass, but the pond is located to the north of the facility not on the west. Further, no BMPs have been implemented in the area to prevent stormwater coming into contact with the activities in that area and therefore

preventing discharge of polluted stormwater from entering the State Highway Administration's MS4 (MDE MS4 Permit No. MD0068276).

The EPA inspection team noted the following:

- Storage of containers (i.e., drums and dumpster in First Vehicle maintenance area) in an area that did not appear to drain to the complex's stormwater pond (Photographs 70 and 71);
- Petroleum leaks resulting in staining from equipment and storage containers (Photograph 75 through 77 );
- Vehicle storage over a storm drain (Photograph 78) without any BMPs in place;
- No review of transfer procedures for the leachate tank;
- Lack of knowledge or procedures for the operation and maintenance of the oil/water separator (Photograph 79);
- Lack of procedures for the operation of the fueling station;
- Lack of procedures for draining stormwater from the fuel tank secondary containment area (Photograph 80);
- Two washing areas with no apparent BMPs (Photographs 83 through 86);
- No secondary containment for two 3,000 gallon deicing fluid tanks (Photographs 87 and 88);
- No BMP to protect a storm drain receiving stormwater from an aggregate stockpile (Photograph 89 through 91 ) resulting in significant sediment and possible salt in the drain; and
- No BMPs to minimize runoff from roadway paint storage and mixing activities, including good housekeeping procedures, resulting in significant staining throughout the area and in the drainage ditch (Photographs 97 through 101).

At the time of the EPA Inspection, construction of a new fueling station was occurring in the west portion of the complex near the complex entrance on North Fountain Green Road. According to the paperwork posted at the complex the disturbed area of the project was approximately 36,000 square feet. It appeared that the applicable local permits (e.g., local grading permit) had been obtained for the construction activities and were posted at the site as required. It did not appear that an NPDES construction general permit issued through MDE was required as the disturbed area was less than one acre. The EPA inspection team noted a "port-o-pot" that appeared slightly tilted (Photograph 68), which could result in a release of chemicals and waste.

In addition, it appeared that there was a lack of overall complex oversight as several County departments and a contractor utilized different portions of the complex. For example, the complex contained a leachate tank utilized by the County's solid waste department. Complex representatives stated that they had not reviewed the operation or maintenance of the tank as it was the responsibility of the Solid Waste Department. The complex's SWPPP did not contain any BMPs for the operation of the loading/unloading or any inspection or maintenance requirements for the tank. The County complex representatives did not provide any direct oversight of First Vehicle. County representatives were not aware if First Vehicle had prepared or implemented a SWPPP, did not conduct periodic inspections of the tenant's area or activities to ensure proper BMPs were implemented and maintained, and did not determine if SWPPP training had been conducted or was adequate.

***Site: Highway Maintenance – Jarrettsville Complex 1348 Cooptown Road, Forest Hill, MD***

The Jarrettsville Highway Maintenance Complex (complex) covers approximately 14 acres and serves as a maintenance, fueling, and materials storage facility. The complex has one building with administrative

offices, a wash bay and several maintenance bays; one storage shed; two sand/salt storage sheds; a fueling station with 4,500 gallons of capacity of gasoline in an above ground storage tank (Photograph 102); a stockpile area for spoils; drainage ways; and a stormwater pond.

A review of permit coverage indicated that discharges associated with vehicle wash waters and stormwater are authorized by State Discharge Permit No. 00-DP-3272 (MD0068071).

According to the complex's industrial SWPPP, runoff from the complex flows through a series of dikes or swales before entering the extended detention stormwater management facility. Runoff from the areas surrounding the stockpiles flows through an earthen dike to a stone outlet, and onto the stormwater management facility. The fuel tanks located in this area are equipped with an oil/water separator to help contain any spills should they occur. From the stormwater management facility, all runoff flows into an unnamed tributary of Deer Creek.

The complex's SWPPP was originally prepared in December 2004 and was most recently revised in January 2009. The EPA Inspection Team noted that the SWPPP did not meet the requirements of Discharge Permit No. 02-SW. The SWPPP did not include complex specific information regarding monitoring (i.e., frequencies, parameters, and results) required by Discharge Permit No. 00-DP-3272; BMP locations; stormwater management pond inspection and maintenance requirements; maintenance requirements and documentation (e.g., log book) of waste treatment systems (e.g., oil/water separator) as specified by Discharge Permit No. 00-DP-3272; locations of outfalls; and directions of stormwater flow on the site map. In addition, the plan provided did not contain applicable or adequate documentation of past inspections, employee training, or monitoring.

The SWPPP did not appear entirely accurate as the SWPPP indicated that the complex had "an extended detention stormwater management facility", a bituminous swale to treat salt dome flows, and an oil/water separator near the fuel tanks (Introduction - Page 1). The stormwater management design documents provided indicated that the pond was designed to detain water to the 2 Year/10 Year standard for the reduction of stormwater quantity discharge; the design document did not describe the water quality features mentioned in the introduction to the SWPPP (bituminous swale and oil/water separator). In addition, the EPA inspection team was not able to locate a bituminous swale for the salt dome drainage area or an oil/water separator near the fueling area.

The EPA inspection team noted the following while at the complex:

- Staining on the paved area outside the administrative office entrance and maintenance bay door and from the storage tank area towards wash bay (Photograph 102);
- Lack of procedures for the operation of the fueling station;
- Lack of knowledge or procedures for the operation and maintenance of the oil/water separator for the wash bay;
- Storage of containers outside without a secondary containment skid as per the SWPPP (i.e., drums of transfer oil, hydraulic fluid, antifreeze, motor oil, and gasoline) (Photograph 103);
- Washing activities outside the wash rack resulting in sufficient flow to reach an on-site storm drain and sediment buildup around the drain (Photographs 104 and 105);
- An oily residue next to the spoils pile (Photographs 106 through 108); and
- Stressed vegetation that appeared to be the result of runoff from salt piles (Photographs 109 and 110).

**Observation 9. Harford County did not track and obtain NPDES industrial stormwater permit coverage**

Part III.E.4 of the permit requires the County to identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage to submit Notices of Intent (NOIs) to MDE for each facility. The County did not obtain permit coverage under MDE's Discharge Permit No. 02-SW for the Board of Education Headquarters facility. The County had identified the facility as requiring permit coverage and subsequently submitted an NOI, but at the time of the inspection had not obtained coverage under MDE's Discharge Permit No. 02-SW.

**Observation 10. Harford County did not develop and implement pollution prevention plans**

Part III.E.4 of the permit requires the County to track the status of pollution prevention plan development and implementation and to report the information to MDE annually. At the time of the EPA inspection, the County had not prepared and implemented SWPPPs for at least two facilities, the Board of Education Headquarters and the Parks and Recreation Maintenance Facility. County representatives stated that the SWPPP for the Board of Education Headquarters was expected to be developed by "the end of the summer in 2009" and that no projected completion date for the Parks and Recreation facility was available.

Also the SWPPPs for the Highway Department Hickory II and Jarrettsville maintenance Complexes lacked required components. In general the plans for the two Highway Facilities were inaccurate and did not contain all information required by Discharge Permit No. 2 (Hickory II Complex) and Discharge Permit No. 00-DP-3272 (Jarrettsville). Specifically the SWPPPs did not contain specific BMP locations; stormwater management pond inspection and maintenance requirements; locations of outfalls; directions of stormwater flow on the site map; and applicable documentation and required records.

Cursory SWPPP reviews were completed for other County facilities not visited. General SWPPP observations included lack of documentation, including required inspections and staff training, minimal facility specific BMPs, and the lack of certification signatures.

The inspection team observed environmental impacts from stormwater pollution at both of the Highway Department maintenance facilities visited (e.g., dead vegetation resulting from salt runoff – Photograph 109).

**Observation 11. Need for oversight of County property requiring NPDES permit coverage**

At the time of the EPA inspection, the duty to obtain permit coverage under Discharge Permit No. 02-SW and maintain compliance with that permit was delegated to the county agency or department responsible for the individual facilities. For example, the Board of Education Headquarters facility is managed by the Board of Education, the Parks and Recreation facility is managed by Parks and Recreation, and the wastewater treatment plants are managed by the Department of Public Works. Based upon conversations with County personnel, the observations regarding coverage under Discharge Permit 02-SW, the adequacy of SWPPPs, and the implementation of SWPPPs, it appeared that there was a lack of training and understanding by County staff from each of the agencies or departments regarding the requirements of MDE's industrial stormwater permit.

**D. Requirement III.E.6 – Public Education**

**1. Publicized Compliance Hotline**

Part III.E.6.a of the Permit requires the County to “publicize a compliance hotline for the public reporting of suspected illicit discharges, illegal dumping, and spills.” Emergency numbers for septic issues, sewer overflows, and illegal dumping are staffed 24 hours a day and posted through the Water and Sewer Department, Health Department, and Emergency Operations Hazmat Team. Harford County’s DPW website includes water and sewer emergency numbers at <http://www.harfordcountymd.gov/dpw/ws/phone.html>. Emergency numbers are also posted through the Sherriff’s Office Environmental Crimes Unit for illegal waste dumping, violations, and enforcement.

An internet feedback site is available at <http://www.harfordcountymd.gov/feedback.cfm> which allows residents to enter comments, inquiries, suggestions and complaints. The County indicated that complaints are noted based on phone calls received from the community as well as reports called in from County inspectors regarding environmental concerns observed in the field.

Written compliance tracking is maintained by the County for the complaints and compliance issues associated with hazardous materials and sewer overflows into streams; however, sediment and erosion control calls are not tracked by the County. Sediment and erosion control complaints are forwarded to the sediment and erosion control field inspectors who investigate the issues; no follow up is conducted by the County.

The 2007 Annual Report did not make note of any calls or complaints being received through the compliance hotlines.

**2. Water Quality Education and Outreach**

The County conducts a variety of education and outreach programs with the community through publications, events, school activities, workshops, and meetings. In 2007, Harford County Water Resources Engineering staff participated in the following outreach activities:

- An Earth Day Festival, the Upper Western Shore Wade-In, and the Harford County Farm Fair;
- The North Bend Elementary School’s Earth Day celebration;
- An aquatic insect demonstration for first graders at North Harford Elementary School;
- The annual Deer Creek Days for seventh graders at North Harford Middle School;
- The Summer Center for Action Investigation at Harford Glen Environmental Education Center;
- The Science and Mathematics Academy at Aberdeen High School;
- The Harford County Envirothon Training;
- Stormwater management workshops for homeowners association and property management companies;
- Capital project community meetings;
- The development, review, and dissemination of the Storm Drain and Turtle Games DVD;
- The “Enhancing the Water Resources” website which incorporates informative links which focus on watersheds, water quality, and watershed restoration;
- The WRAS Stakeholder Workgroup which developed a strategy to restore and protect the Deer Creek Watershed;
- The second annual BioBlitz at the Anita C. Leight Estuary Center which increased the public’s understanding of the variety of wildlife at the park;

- The development of the Youth Environmental Summit for County high school students;
- The installation of stream name signs along Deer Creek, Swan Creek, and Bynum Run;
- The production of publications such as EnviroNews and “Your Building Permit & The Chesapeake Bay”; and
- Serving as the coordinator for the Environmentality group.

Part III.E.6.b of the permit requires that the County provide information regarding water quality issues to the general public. Brochures and pamphlets were provided to the public which address: water conservation, recycling, hazardous waste disposal, and watershed protection. Table 4 contains a list of the water quality information that must be available to the general public and the associated documents that Harford County furnished during the inspection which address these topics (these documents are included in Exhibit 14).

**Table 4. Summary of Water Quality Outreach Materials Provided by Harford County**

Water Quality Issues listed in Permit Section III.E.6.b	Outreach Materials Furnished by Harford County During the Inspection
i. Water conservation	“Water Conservation – Save water with efficient systems and healthy plants” (Exhibit 14A) Bookmark: “Every Drop Counts” (Exhibit 14B)
ii. Stormwater management facility maintenance	Stormwater Management Maintenance Workshops (Exhibit (14C)
iii. Erosion and sediment control	“Your Building Permit and the Chesapeake Bay” (Exhibit 14D)
iv. Household hazardous waste	“Oil and Antifreeze Recycling” (Exhibit 14E)
v. Lawn care and landscape management	Conservation Landscaping – a homeowner’s guide” (Exhibit 14F) “Maryland Conservation Gardening” (Exhibit 14G) “Grasscycling Guide” (Exhibit 14H) “Nutrient Management – Apply only the nutrients plants can use.” (Exhibit 14I) “Mulching – Mulching enriches and protects soil, helping provide a better growing environment.” (Exhibit 14J) “Clean Waters – Starting in Your Home and Yard” (Exhibit 14K) “Streamside Neighbors – Fertilizers & Pesticides & Natural Pest Control” (Exhibit 14L) “Pest Management – Early detection and treatment of pests means a healthier growing environment.” (Exhibit 14M)
vi. Litter control, recycling and composting	“Composting – Composting turns household wastes into valuable fertilizer and soil organic matter.” (Exhibit 14N)
vii. Car care, mass transit and alternative transportation	None provided. <sup>1</sup>
viii. Private well and septic system management	None provided. <sup>1</sup>
ix. Pet waste management	“Fact Sheet: Pet Waste and Water Quality” (Exhibit 14O)

<sup>1</sup> The County indicated that outreach on this topics is managed by another department.



**Observation 12. Harford County does not evaluate the effectiveness of its program in reaching the design community with outreach efforts**

Stormwater Management Maintenance Workshops are provided by the County. The workshops cover stormwater management facility maintenance, inspections, and Maryland design manual requirements (the Agenda is provided as Exhibit 14 C). The County offers the workshops to the design community as well as homeowners associations and parties that would perform maintenance on private BMPs. Also, as described in Section III.A of this report, the lead design reviewer offers to meet with design engineers to discuss the County's review comments. Despite these efforts, the County indicated that the majority of BMP facilities do not pass the first round of as-built inspections. The lack of design and construction compliance indicates a possible gap between the County and the design community.

As outlined above, the County provided literature to address permit requirements III.E.6.b.i through III.E.6.b.vi, and III.E.6.b.ix; these pamphlets and brochures are included in Exhibit 14. No public education information was provided regarding (1) car care, mass transit and alternative transportation, or (2) private well and septic system management (permit requirements III.E.6.b.vii and III.E.6.b.viii, respectively). The County indicated that outreach on these topics is managed by other departments (Planning and Zoning and the Health Department, respectively).

**Observation 13. Harford County does not provide outreach and education regarding illicit discharge detection and elimination**

Part III.E.6.c of the permit requires that the County provide information regarding water quality issues to the regulated community. There is no evidence of such information being requested or provided. The County indicated that they would refer industrial entities (such as car washes) to MDE for information regarding water quality regulations.

**E. Requirement III.H – Assessment of Controls**

The County's Water Resources Department is responsible for conducting biological, physical, and chemical monitoring. Based on discussions with County personnel and a review of documentation provided, the County appeared to be implementing the Assessment of Controls program in accordance with the provisions of the Permit.

**F. Requirement III.F and III.G – Watershed Assessment, Planning, and Restoration**

Part III.F of the Permit requires the County to conduct a "systematic assessment of water quality within all of its watersheds. These assessments shall include detailed water quality analyses, the identification of water quality improvement opportunities, and the development of plans to control stormwater discharges to the maximum extent practicable." Part III.G of the Permit requires the County to "implement those practices identified in Part III.F above to control stormwater discharges to the maximum extent practicable." Furthermore, the Permit requires the County to restore or treat a total of 20 percent of the County's impervious area over the previous permit term (10 percent) and the current permit (an additional 10 percent) which amounts to 1,659 acres of the total county area of 8,297 acres.

During the inspection, Harford County explained the stream corridor assessment approach that they have used to systematically assess water quality within the County's watersheds. The County also explained the more detailed studies and projects that have been conducted within smaller drainage areas.

**Observation 14. Harford County is not restoring or treating 20 percent of the County's impervious area**

The County had not implemented restoration efforts in a watershed, or combination of watersheds, to restore twenty percent of the County's impervious surface area. County representatives reported in their 2007 Annual Report that they expected to have completed restoration or treatment of approximately 316 acres of the total 8,297 acres, representing approximately 3.8 percent, by the end of the County's second permit term. County personnel also stated that they have not assessed whether the County has identified enough projects to achieve the 20 percent impervious surface restoration.

**IV. ADDITIONAL CONCERNS**

The EPA inspection team made the following additional observations during the inspection.

**A. Lack of Adequate Funding**

According to Harford County's permit application (included as Appendix I of the Permit), the County reported that funding for its NPDES program will be obtained through General Funds and that current revenue sources are adequate to fund the many components of its stormwater management and NPDES programs.<sup>2</sup> However, during the inspection the County indicated that they do not have adequate funding to meet the requirements of their permit. Several County programs were found to be under-staffed and/or under-funded and are therefore unable to fully execute the MS4 program to meet the permit requirements.

For example, post-construction stormwater BMP preventative maintenance inspections are not being performed to the County's standard, at least partially due to the fact that the County relies on seasonal employees and less experienced staff. If additional resources are allocated to the program, Harford County could seek a second lead inspector with the skill set and experience of the current lead inspector (who executes all of the as-built inspections) to manage the triennial inspection program.

Also, as discussed above in Section III.F, the County has not met the previous or current permit goals to restore 10 percent (per permit period) of the County's impervious surface area (20 percent total). The County explained that adequate funding was not available to plan and execute all of the projects necessary to meet this goal.

**B. Summary Recommendation Regarding Development and Implementation of the County's Stormwater Management Programs**

MS4 programs, by necessity, involve numerous divisions and personnel within an organization. Therefore, successful implementation of a comprehensive MS4 program relies on strong interdepartmental coordination and cooperation by personnel. In recognition of this, the entire County, rather than a single department, is listed as a co-permittee in the Permit. It was apparent through the course of the EPA inspection that interdepartmental coordination and cooperation was insufficient or at times absent.

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<sup>2</sup> Appendix I – Maryland Department of the Environment, National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Discharge Permit Application Summary, Harford County; Available at: [http://www.mde.state.md.us/assets/document/sedimentStormwater/MSSPermit/ha\\_permit\\_appendix.pdf](http://www.mde.state.md.us/assets/document/sedimentStormwater/MSSPermit/ha_permit_appendix.pdf).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 29 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David R. Craig, County Executive  
Harford County  
220 South Main Street  
Bel Air, Maryland 21014

Re: Administrative Penalty Complaint  
Docket No. CWA-03-2010-0406

Dear Mr. Craig:

The U.S. Environmental Protection Agency (EPA or the Agency) has determined that Harford County, Maryland has violated provisions of its Clean Water Act NPDES Permit No. MD0068268 dealing with its Municipal Separate Storm Sewer System (MS4) program. As a result, EPA has issued the enclosed Administrative Penalty Complaint and Notice of Opportunity to Request a Hearing pursuant to Section 309(g) of the Clean Water Act.

This action is an important part of EPA's Chesapeake Bay Compliance Strategy to protect and improve the water quality of the Chesapeake Bay watershed. Consistent with Agency practice, EPA will be making the public aware of this enforcement action and other similar cases being taken at this time by EPA. EPA has worked closely with the Maryland Department of the Environment (MDE) on this and other cases in the state involving the MS4 program.

The Administrative Penalty Complaint and other documents enclosed with this letter contain important information concerning this legal proceeding, and I encourage you and other members of your office to review them closely. EPA will be happy to meet with you or your representatives to discuss this matter, and contact information is provided below.



I urge you to address this matter as soon as possible. If you wish to discuss this matter, please contact Mr. Chuck Schadel at 215-814-5761, or have your counsel contact Mark Bolender, Esq., at 215-814-2642.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director  
Water Protection Division

Enclosures

cc: Mr. Brian Clevenger  
Water Management Administration, Sediment, Stormwater, and Dam Safety Program  
Maryland Department of the Environment  
Ms. Christine Buckley, Harford County MS4 Program Manager

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Harford County  
220 South Main Street  
Bel Air, MD 21014

Respondent.

Docket No. CWA-03-2010-0406

**Proceeding to Assess Class II  
Administrative Penalty Under  
Section 309(g) of the Clean Water Act**

**ADMINISTRATIVE PENALTY COMPLAINT  
AND NOTICE OF OPPORTUNITY TO  
REQUEST HEARING**

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director ("Complainant").

**II. FACTUAL AND LEGAL ALLEGATIONS**

2. Upon information and belief, Harford County ("the County" or "Respondent") is a political subdivision of the State of Maryland, and therefore a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

3. Respondent, at all times relevant to this Complaint, has owned and/or operated a municipal separate storm sewer system ("MS4"), located within the geographic boundaries of Harford County, Maryland.

4. On May 20 and 21, 2009, duly-authorized representatives of EPA conducted an audit of the Respondent's MS4 Program, including an on-site inspection (hereinafter referred to as "May 2009 Audit").

A copy of the July 10, 2009 Findings of Violation and Administrative Order is contained in Attachment 1 hereto.

6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

8. Pursuant to section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits in 1989.

9. The CWA requires that MS4s serving a population of 250,000 or more individuals apply for and obtain an NPDES permit.

10. At all times relevant to this Complaint, Respondent has owned and operated an MS4 serving a population of 250,000 individuals or more.

11. MDE issued NPDES MS4 Discharge Permit No. MD0068268 to Respondent on November 1, 2004, hereinafter referred to as the "MS4 Permit." The MS4 Permit expired on November 1, 2009, and has been administratively extended since that date.

12. On June 16, 2010, Respondent submitted an application for a permit renewal to MDE.

### **III. FINDINGS OF VIOLATION**

#### **Count 1: Failure to Provide Relevant Information From Preventative Maintenance Inspections**

13. The MS4 Permit, Part III.E.1.a., requires the Respondent to, among other things, conduct preventative maintenance inspections of all stormwater management facilities on at least a triennial basis. The MS4 Permit further requires that documentation identifying the facilities inspected, the number of maintenance inspections, follow-up inspections, the enforcement action(s) used to ensure compliance, the maintenance inspection schedules, and any other relevant information shall be submitted in the County's annual reports.

14. The May 2009 Audit revealed that Respondent had failed to document relevant information gathered during preventative maintenance inspections by not identifying the current storage capacity of post-construction storm water management structures.

15. Respondent's failure to document relevant information on the storage capacity of post-construction storm water management structures during preventative maintenance inspections constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 2: Failure to Properly Address Illicit Discharges, Illegal Dumping and Spills**

16. The MS4 Permit, Part III.E.3.d, requires the Respondent to implement an inspection and enforcement program, or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer system that are not composed entirely of stormwater are either permitted by MDE or eliminated. The MS4 Permit further requires that such a program shall include, *inter alia*, "appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills. Significant discharges shall be reported to MDE for enforcement and/or permitting."

17. The May 2009 Audit revealed that Respondent had failed to implement a program providing for appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills by not:

- a. Having a central phone number for receiving complaints from citizens in order to investigate and eliminate illicit discharges, illegal dumping, and spills;
- b. Having formal or informal procedures for directing reports of illicit discharges, illegal dumping, and spills to the appropriate County department;
- c. Providing a log of illicit discharges, illegal dumping, and spills in annual reports;
- d. Failing to address the threat identified on February 6, 2008 to storm water quality from activities at the Ace Appliance Facility;
- e. Developing standard operating procedures for investigating and eliminating illicit discharges, illegal dumping, and spills; and
- f. Failing to provide County representatives with training or a specific direction to identify illicit discharges outside of their primary hotspot and dry weather field screening follow-up responsibilities.

18. Respondent's failure to implement a program providing for appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 3: Failure to Submit a Notice of Intent for all County-Owned Facilities that Require NPDES Stormwater General Permit Coverage**

19. The MS4 Permit, Part III.E.4, requires the Respondent to, among other things, to "identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent to MDE for each".

20. The May 2009 Audit revealed that Respondent had failed to identify the County-owned Board of Education Headquarters facility, which requires NPDES stormwater general permit coverage.

21. Respondent's failure to identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

#### **IV. CONCLUSION OF LAW**

22. By failing to comply with its Permit, Respondent discharged pollutants contained in storm water associated with an MS4, in violation of the Permit and Section 301 of the CWA, 33 U.S.C § 1311.

#### **V. PROPOSED CIVIL PENALTY**

23. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.

24. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

25. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

26. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

27. Based upon the foregoing allegations, and pursuant to the authority of section 309(g)(2)(B) of the CWA, and in accordance with the enclosed "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule", 40 C.F.R. Part 22), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of **seventy five thousand dollars (\$75,000)** for the violations alleged herein.. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.



28. The proposed penalty was determined after taking into account factors listed in 33 U.S.C. § 1319(g)(3): the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. In addition to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

29. The Regional Administrator may issue the Final Order Assessing Administrative Penalties after the thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section VI, below, or pays the civil penalty in accordance with Paragraph 48, below.

30. Subject to the limitations contained in 40 C.F.R. § § 22.18(a) and 22.45, Respondent may conclude this proceeding at any time by paying the penalty proposed in the Complaint in the manner described in Paragraph 45.

31. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.

## **VI. ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

32. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint in accordance with the procedures contained in 40 C.F.R. Part 22.

33. If Respondent requests a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), who have commented upon the proposed penalty assessment, will have an opportunity, pursuant to Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon, pursuant to 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

34. Hearing procedures are described in the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*," 40 C.F.R. Part 22, a copy of which is enclosed.

35. At the hearing, Respondent may contest any material fact contained in the violations listed in Section III, above, and the appropriateness of the penalty amount proposed in Section IV.

36. A Request for Hearing and the Answer to this Complaint must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Copies of the Request for Hearing and the Answer along with other documents filed in this action should also be sent to the following:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

37. Failure to file an Answer may result in entry of a default judgment against Respondent. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

38. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:

- a. The specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
- b. The facts which Respondent disputes;
- c. The basis for opposing any proposed relief; and,
- d. Whether a hearing is requested.

**Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.**

39. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

40. A copy of this Answer and any subsequent documents filed in this action should be sent to:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

41. Neither assessment nor payment of an administrative civil penalty pursuant to the CWA shall affect Respondent's continuing obligation to comply with the statute, any other Federal or State laws, and/or with any separate Compliance Order issued under either statute, for the violations alleged herein.

**VII. SETTLEMENT CONFERENCE**

42. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

43. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

44. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Mr. Charles Schadel at (215) 814-5761 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal

counsel, you may have your counsel contact Mr. Mark Bolender, Assistant Regional Counsel, at (215) 814-2642, on your behalf. **Such a request for a settlement conference does not relieve Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

### **VIII. QUICK RESOLUTION**

45. In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's Prehearing Exchange. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

46. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 20 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be sent to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

47. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

48. Payment of the civil penalty amount set forth in Paragraph 27, above, shall be

made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action: CWA-03-2010-0406;
- b. All checks shall be made payable to: **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen (513-487-2091), Eric Volck (513-487-2105)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: (314-418-1028)

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- f. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

PNC Bank  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – Checking

808 17<sup>th</sup> Street, NW  
Washington, DC 20074

Contact: John Schmid (202-874-7026)  
REX (866-234-5681)

Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

- g. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- h. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

49. Copies of the check shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

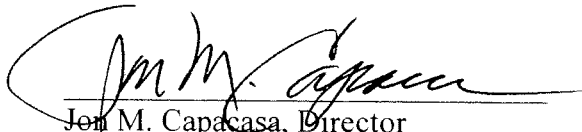
and:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

## **IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS**

50. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: SEP 29 2010

  
Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection  
Agency, Region III

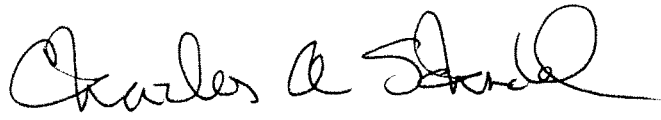
CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

David R. Craig, County Executive  
Harford County  
220 South Main Street  
Bel Air, Maryland 21014

SEP 29 2010

Date: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Charles A. Schadel", written over a horizontal line.

Charles A. Schadel





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Chuck

RECEIVED  
2010 MAR 23 AM 8:46  
REGION III PHILADELPHIA

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

MAR 23 2010

Harford County Government  
c/o David R. Craig, County Executive  
220 South Main Street,  
Bel Air, Maryland 21014

Re: Municipal Separate Storm Sewer System Inspection Report  
and Administrative Order (CWA-03-2010-0120 DN)

Dear Mr. Craig:

On May 20 and 21, 2009, the Environmental Protection Agency, Region III (EPA) conducted an audit to investigate compliance with the National Pollutant Discharge Elimination System (NPDES) permit issued for operation of Harford County's Municipal Separate Storm Sewer System (MS4). Enclosed is a copy of the Audit Report.

Also enclosed is an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1319(a). This Order addresses violations identified during the audit. You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent, or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of this Order constitutes a violation of Section 309 of the Act, 33 U.S.C. § 1319, and may result in further enforcement action involving civil or criminal penalties. Please note that, as indicated by its terms, this Order is effective upon receipt.

If you require any information or assistance regarding this Order, please contact Chuck Schadel, at 215-814-5761.

Sincerely,

Jon M. Capacasa, Director  
Water Protection Division

Enclosures (2)

cc: Brian Clevenger, MDE  
Carol Coates, MDE







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

RECEIVED  
2010 MAR 23 AM 8:46  
EPA REGION III PHILA PA

IN THE MATTER OF :

Harford County Government  
220 South Main Street,  
Bel Air, MD 21014

Docket No. CWA-03-2010-0120DN  
FINDINGS OF VIOLATION  
ORDER FOR COMPLIANCE  
AND  
INFORMATION REQUEST

Respondent

**I. STATUTORY AUTHORITY**

1. This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act (CWA or Act), 33 U.S.C. 1318 and Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. Section 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

**II. STATUTORY AND REGULATORY BACKGROUND**

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
  - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;
  - (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;

- (c) Any requirement under Section 308 of the Clean Water Act; and
  - (d) Carrying out Sections 305, 311, 402, 404, and 504 of the Clean Water Act.
- 4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
  - 5. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
  - 6. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
  - 7. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
  - 8. A NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
  - 9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits in 1989.

### **III. EPA FINDINGS AND ALLEGATIONS**

- 10. Harford County Government, MD (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- 11. Respondent, at all times relevant to this Order, has owned and/or operated an MS4, located within the geographic boundaries of Harford County, Maryland ("MD").
- 12. On November 1, 2004, the MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD0068268, hereinafter referred to as the "MS4 Permit." The MS4 Permit was scheduled to expire on November 1, 2009, and has been administratively extended to the present.
- 13. On May 20 and 21, 2009, EPA personnel and personnel from contractors hired by EPA, conducted a review of the Respondent's MS4 Program.

#### **IV. VIOLATIONS**

##### **A. BMPs - Preventive Maintenance Inspections**

14. The Permit, Part III, E., 1.,a., requires the Respondent, among other things, to: “Conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis. Documentation identifying the facilities inspected, the number of maintenance inspections, follow-up inspections, the enforcement action(s) used to ensure compliance, the maintenance inspection schedules, and any other relevant information shall be submitted in the County’s annual reports.”
15. As of May 21, 2009, the Respondent failed to document relevant information by not identifying the current storage capacity of post-construction storm water management structures during preventative maintenance inspections.
16. Respondent failed to comply with Part III, E.1.a. of the Permit by not documenting relevant information on the storage capacity of post-construction storm water management structures during preventative maintenance inspections.

##### **B. Illicit Discharges - Appropriate Enforcement Procedures**

17. The Permit, Part III, E., 3.,d. requires the Respondent to use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills. Significant discharges must be reported to MDE for enforcement and/or permitting.
18. As of May 21, 2009, the Respondent failed to use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills by not:
  - a. having a central phone number for receiving complaints from citizens in order to investigate and eliminate illicit discharges, illegal dumping, and spills;
  - b. having formal or informal procedures for directing reports of illicit discharges, illegal dumping, and spills to the appropriate County department;
  - c. providing a log of illicit discharges, illegal dumping, and spills in annual reports;
  - d. addressing the threat identified on February 6, 2008 to storm water quality from activities at the Ace Appliance Facility; and
  - e. developing standard operating procedures for investigating and eliminating illicit discharges, illegal dumping, and spills.
19. Respondent failed to comply with Part III, E., 3., d. of the Permit by failing to use formal or informal procedures for identifying, investigating, tracking and eliminating illicit discharges, spills or illegal dumping.

**C. County Property Management**

20. The Permit, Part III, E.4. requires the Respondent to submit a Notice of Intent ("NOI") for all County-owned facilities that require NPDES stormwater general permit coverage.
21. As of May 21, 2009, the Respondent failed to submit a NOI for all County-owned facilities that require NPDES stormwater general permit coverage by not submitting an NOI for the Board of Education Headquarters facility.
22. Therefore, by failing to submit a NOI for all County-owned facilities that require NPDES stormwater general permit coverage, Respondent failed to comply with Part III, E.4. of the Permit.

**V. CONCLUSION OF LAW**

23. Respondent's failures to comply with the MS4 permit constitutes violations of the Permit and Section 301 of the CWA, 33 U.S.C §1311.

**VI. ORDER AND REQUEST**

AND NOW, this 23rd day of March, 2010, Respondent is hereby ORDERED AND REQUESTED, pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a) and Section 308 of the Act, 33 U.S.C. 1318, to do the following:

24. Within sixty (60) days of the effective date of this Order and Request, Respondent shall:
  - a. Modify in writing its storm water management programs to require actions to rectify the violations identified in this Order. Please include a copy of all NOIs submitted for each municipal facility that requires NPDES permit coverage. Please submit the revised Plan to:

Chuck Schadel, Enforcement Officer  
U.S. EPA, Region III, (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-5761

And

Mark Bolender, Esq.  
U.S. EPA, Region III, (3RC43)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

- b. Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

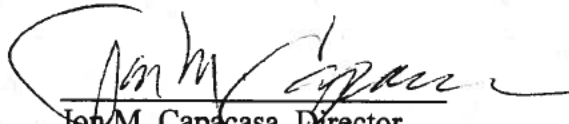
## **VII. GENERAL PROVISIONS**

25. Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
26. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
27. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and Request and with any applicable permit. EPA reserves all existing inspection authority.
28. This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.
29. Violation of the terms and conditions of this Order and Request constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

**VIII. EFFECTIVE DATE**

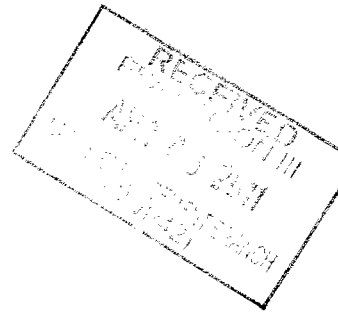
This ORDER AND REQUEST is effective upon receipt.

Date: MAR 23 2010

  
Jon M. Capacasa, Director  
Water Protection Division  
EPA, Region III



**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**



In the matter of:

Harford County Government  
220 South Main Street  
Bel Air, Maryland 21014

U.S. EPA Docket No.:  
CWA-03-2010-0406

Respondent

Proceeding to Assess Class II  
Administrative Penalty under Section  
309(g) of the Clean Water Act

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Harford County, Maryland ("Harford" or "Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g) ("CWA" or "Act"), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301 of the CWA, 33 U.S.C. § 1311, arising out of an audit of Harford conducted by the EPA on May 20 and 21, 2009 and/or alleged in an administrative Complaint filed on September 29, 2010 (the "Complaint").
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act. For penalties assessed under Section 309(g)(2)(B) of the Act, violations occurring after March 15, 2004 through January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per day per violation, up to a total penalty amount of \$157,500. Violations of the Act that occurred after January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per day per violation, up to a maximum of \$177,500.

## **II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

3. The following Paragraphs contained in the Complaint are incorporated herein: Paragraphs 1-15 and 19-50.
4. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint.
5. Respondent admits the jurisdictional allegations contained in the Complaint.

## **III. CONCLUSIONS OF LAW**

6. As alleged in the Complaint, EPA concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

## **IV. CONSENT AGREEMENT AND FINAL ORDER**

7. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
8. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
9. Each party to this action shall bear its own costs and attorney fees.
10. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
11. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
12. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations alleged in the Complaint, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of twenty seven thousand dollars (\$27,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
13. Respondent shall pay half of the total administrative civil penalty (\$13,500) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Respondent shall pay the remaining half of the administrative civil penalty, plus sixty seven dollars and fifty cents (\$67.50) in interest,

within one hundred eighty (180) days of the effective date of this CAFO. The final payment amount, including interest, will be thirteen thousand five hundred and sixty seven dollars and fifty cents (\$13,567.50). Each payment installment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury"-

By regular mail:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank  
ABA = 051036706  
Environmental Protection Agency  
Account Number: 310006

CTX Format  
Transaction Code 22 – checking  
808 17<sup>th</sup> Street, NW  
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On Line Payments:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of each payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Mark Bolender  
Mail Code 3RC43  
U.S. EPA Region III  
Office of Regional Counsel  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, or any regulations promulgated thereunder.
15. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

16. This Consent Agreement and the accompanying Final Order resolve the civil claims for the violations alleged in the Complaint. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with the CAFO shall not be a defense to any actions subsequently commenced for any violations of any other Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations. Nothing herein shall be construed to limit the authority of the Complainant to undertake such action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
17. Except as specifically stated herein, nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law.
18. The penalty specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
19. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material

respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind the Respondent.
21. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.
22. It is understood and agreed by the EPA and Respondent that this CAFO is a settlement of disputed claims and that neither this writing nor the fact of the CAFO constitute an admission of liability or wrongdoing or breach of any duty by Respondent. Respondent does not admit any acts which may be alleged in the Complaint.

#### **V. EFFECTIVE DATE**

23. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT HARFORD COUNTY, MARYLAND:

By: David R. Craig  
David R. Craig  
County Executive


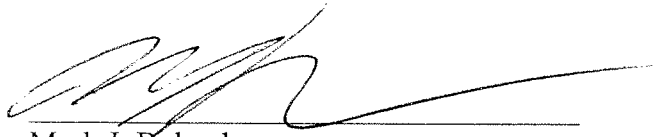
Approved as to form and legal  
sufficiency this 10th day of  
March, 20 11.

Margaret Hartka  
Margaret Hartka  
Senior Assistant County Attorney

Recommended for approval this  
10th day of MARCH, 20 11.

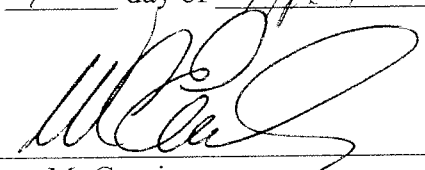

Robert B. Cooper  
Robert B. Cooper, P.E.  
Director, Department of Public Works

FOR EPA:

  
Jon M. Capacasa  
Director, Water Protection Division  
U.S. EPA Region III  
Mark J. Bolender  
Assistant Regional Counsel  
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,

this 1 day of April, 2011.

  
 Shawn M. Garvin  
Regional Administrator  
U.S.EPA Region III





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Jay Sakai, Director  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

SEP 20 2012

Re: Specific Objection to Harford County Phase I Municipal Separate Storm Sewer System  
(MS4) Permit MD0068268

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Harford County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Harford County. However, MDE did not incorporate EPA's comments into the initial draft of the Harford County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Harford County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

## I. Required Changes

### **1. Water Quality Standards**

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Harford County permit (Enforcement and Penalties) contains general language related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the Harford County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA’s objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

### **2. Industrial / Commercial Monitoring**

Part III.C of the draft Harford County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of “a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)...” 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA’s objection, MDE must revise the permit in accordance with those recommendations.

## II. Recommended Change

EPA also suggests the following recommendation for inclusion in the County's permit.

### Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

## III. Anticipated Changes

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Harford County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Harford County, EPA hereby reserves its right to renew its objection to such a draft permit.

### 1. Chesapeake Bay TMDL

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Harford County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Harford County permit.

### 2. Backsliding

EPA had previously expressed a concern that the Harford County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Harford County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Harford County permit.

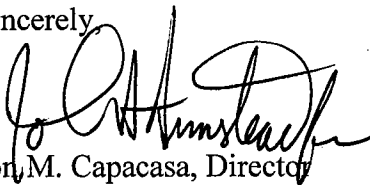
### **3. Maximum Extent Practicable**

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R §122.4(c), MDE may not issue the Harford County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Christine Buckley, P.E., Harford County



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Jay Sakai, Director  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

SEP 20 2012

Re: Specific Objection to Harford County Phase I Municipal Separate Storm Sewer System  
(MS4) Permit MD0068268

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Harford County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Harford County. However, MDE did not incorporate EPA's comments into the initial draft of the Harford County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Harford County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

## I. Required Changes

### **1. Water Quality Standards**

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Harford County permit (Enforcement and Penalties) contains general language related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the Harford County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA’s objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

### **2. Industrial / Commercial Monitoring**

Part III.C of the draft Harford County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of “a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)...” 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA’s objection, MDE must revise the permit in accordance with those recommendations.

## II. Recommended Change

EPA also suggests the following recommendation for inclusion in the County's permit.

### Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

## III. Anticipated Changes

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Harford County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Harford County, EPA hereby reserves its right to renew its objection to such a draft permit.

### 1. Chesapeake Bay TMDL

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Harford County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Harford County permit.

### 2. Backsliding

EPA had previously expressed a concern that the Harford County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Harford County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Harford County permit.

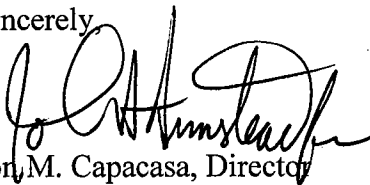
### **3. Maximum Extent Practicable**

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R §122.4(c), MDE may not issue the Harford County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Christine Buckley, P.E., Harford County





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**CITY OF HAVRE DE GRACE, MARYLAND  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

DEPARTMENT OF PLANNING and  
DEPARTMENT OF PUBLIC WORKS  
711 PENNINGTON AVENUE  
HAVRE DE GRACE, MD 21078

**Final Report Date: June 20, 2014**

**Field Activity Dates: January 16–17, 2014**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**

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## DOCUMENTS CITED IN REPORT

Shortened Name	Document Title and Date
EPA Records Request	List of documents the EPA Inspection Team requested from the City on January 3, 2014
Permit	<i>National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, General Discharge Permit No. 03-IM-5500 (General NPDES Permit No. MDR05500), effective April 14, 2003</i>
City Response Inventory	Inventory of documents provided by the City in response to the EPA Records Request
Sediment Control Subtitle	Maryland Environment Article, Title 4, Subtitle 1, <i>Annotated Code of Maryland</i>
Stormwater Management Subtitle	Maryland Environment Article, Title 4, Subtitle 2, <i>Annotated Code of Maryland</i>
MDE's General Industrial Stormwater Permit	MDE's General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 12-SW/NPDES Permit No. MDR0000)

## ACRONYMS AND ABBREVIATIONS USED IN REPORT

Acronym or Abbreviation	Corresponding Term
BMP	best management practice
COMAR	Code of Maryland Regulations
DPW	Department of Public Works
EPA	[United States] Environmental Protection Agency
ERP	enforcement response plan
ESD	environmental site design
GIS	geographic information system
GPS	global positioning satellite
HOA	homeowners association
IDDE	illicit discharge detection and elimination
MDE	Maryland Department of the Environment
MEP	maximum extent practicable
MOU	memorandum of understanding
MS4	municipal separate storm sewer system
NFIRS	National Fire Incident Reporting System
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
SCD	soil conservation district
SOP	standard operating procedure
SWPPP	stormwater pollution prevention plan
UV	ultraviolet

## EXECUTIVE SUMMARY

From January 16 through 17, 2014, a compliance inspection team composed of staff from U.S. Environmental Protection Agency (EPA) Region III and EPA's contractor, PG Environmental, LLC, (collectively the EPA Inspection Team) inspected the municipal separate storm sewer system (MS4) program of the City of Havre de Grace, Maryland (hereinafter, City).

Discharges from the City's MS4 are regulated by the Maryland Department of Environment (MDE) *General Permit for Discharges from Small Municipal Separate Storm Sewer Systems*, General Discharge Permit No. 03-IM-5500 (General National Pollutant Discharge Elimination System (NPDES) Permit No. MDR055500; hereinafter, the Permit), effective April 14, 2003. The Permit was set to expire on April 14, 2008, but has been administratively extended by MDE until a new permit is issued.

The purpose of this inspection was to obtain information to assist EPA in assessing the City's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 program.

Based on the information obtained and reviewed, the EPA Inspection Team made several observations concerning the City's MS4 program related to the specific Permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

Permit Requirement	Observations
Permit Part III.C (Illicit Discharge Detection and Elimination Program)	Observation 1. At the time of the inspection, the City's GIS-based map did not show the extent of the storm drain system.
	Observation 2. During field visits, the EPA Inspection Team observed discrepancies between the GIS map and the actual location of some storm sewer outfalls.
	Observation 3. It appears that the City does not have procedures to field screen storm drain outfalls on a consistent basis.
	Observation 4. At the time of the inspection, the City did not have inspection procedures for identifying the sources of illicit discharges to the City's storm drain system.
	Observation 5. At the time of the inspection, the City did not have enforcement and penalty procedures regarding illicit discharges.

Permit Requirement	Observations
<p>Permit Part III.D (Construction Site Stormwater Runoff Control Program)</p>	<p>Observation 6. During onsite discussions, City representatives noted the municipality does not have delegation of erosion and sediment control enforcement authority from MDE. As a result, MDE is responsible for enforcing the state's erosion and sediment control laws in Havre de Grace.</p> <p>Observation 7. City representatives noted the municipality's requirements for erosion and sediment control are provided in Chapter 89 (Grading and Filling) of the Code of the City of Havre de Grace.</p> <p>Observation 8. The City's Planning Department works with the Harford County Soil Conservation District (SCD) to review and approve erosion and sediment control plans prior to issuing grading permits for construction projects within the City.</p> <p>Observation 9. The City's Inspections Manager noted he and two of his staff perform inspections of active construction projects, and each inspector has received erosion and sediment control training from MDE and holds a "green certification card."</p> <p>Observation 10. The City's Inspections Manager explained the City's inspectors generally visit active construction projects on a daily basis and may make observations regarding erosion and sediment control issues.</p> <p>Observation 11. It appears that the City is not preparing written inspection reports detailing whether the approved plan and erosion and sediment control practices have been properly implemented and maintained.</p> <p>Observation 12. At the time of the inspection, the City did not have an enforcement response plan (ERP) or other procedural document describing when and how enforcement should be escalated and under what circumstances penalties, if any, should be assessed.</p> <p>Observation 13. During the on-site inspection, the EPA Inspection Team visited sites related to the City's construction site stormwater runoff control program.</p>

Permit Requirement	Observations
<p>Permit Part III.E (Post-Construction Stormwater Management Program)</p>	<p>Observation 14. During onsite discussions, City representatives provided the EPA Inspection Team with a copy of the municipality's latest stormwater management ordinances, which incorporate the <i>2000 Maryland Stormwater Design Manual, Volumes I and II</i> and all subsequent revisions by reference.</p> <p>Observation 15. The City's Deputy Director of Planning noted his office is responsible for reviewing stormwater management plans. He indicated, however, the City contracts with a third-party engineer to review plans for large projects (i.e., those with 30,000 square feet or more of disturbance). The City does not have its own engineer on staff.</p> <p>Observation 16. The EPA Inspection Team's file review observed discrepancies between the City's BMP inventory and list of inspections.</p> <p>Observation 17. The Inspections Manager indicated he schedules inspections using the inventory referenced above. He explained inspections are generally performed annually and more frequently if problems are identified.</p> <p>Observation 18. The City does not have written SOPs for conducting inspections of post-construction BMPs.</p> <p>Observation 19. The inventory of post-construction BMPs consists primarily of ponds. The Inspections Manager said the majority of the ponds were designed under Maryland's 2000 standards and specifications.</p> <p>Observation 20. The City's Inspections Manager indicated when an issue is observed with a private post-construction stormwater management pond, his office sends a letter via certified mail (NOV) to responsible parties.</p> <p>Observation 21. City representatives indicated the City code requires an applicant(s) or owner(s) of land served by a private stormwater management facility to execute a maintenance agreement binding on all subsequent owners.</p> <p>Observation 22. During the on-site inspection, the EPA Inspection Team visited sites related to the City's post construction stormwater management program.</p>

Permit Requirement	Observations
Permit Part III.F (Pollution Prevention and Good Housekeeping)	Observation 23. During the on-site inspection, the EPA Inspection Team visited sites related to the City's pollution prevention and good housekeeping program.



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- Appendix 1: Maryland Department of Environment *National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer Systems* (General Discharge Permit No. 03-IM-5500, General NPDES Permit No. MDR055500)
- Appendix 2: Original City NOI for MS4 Program (dated March 6, 2003)
- Appendix 3: Inspection Schedule
- Appendix 4: Inspection Sign-In Sheets
- Appendix 5: Exhibit Log
- Appendix 6: Photograph Log
- Appendix 7: Document Log

## INTRODUCTION

From January 16 through 17, 2014, a compliance inspection team composed of staff from U.S. Environmental Protection Agency (EPA) Region III and EPA's contractor, PG Environmental, LLC, (collectively the EPA Inspection Team) inspected the municipal separate storm sewer system (MS4) program of the City of Havre de Grace, Maryland (City or Permittee). Dry weather was experienced throughout the inspection activities.

Discharges from the City's MS4 are regulated by the Maryland Department of Environment (MDE) *General Permit for Discharges from Small Municipal Separate Storm Sewer Systems*, General Discharge Permit No. 03-IM-5500 (General National Pollutant Discharge Elimination System (NPDES) Permit No. MDR055500; hereinafter, the Permit), effective April 14, 2003. The Permit was set to expire on April 14, 2008, but has been administratively extended by MDE until a new permit is issued. A copy of the Permit is included as [Appendix 1](#). A copy of the City's original MS4 Notice of Intent (NOI), dated June 4, 2003, which contains descriptions of measures for program compliance and MDE's review and acceptance of the material, is included as [Appendix 2](#).

The purpose of this inspection was to obtain information to assist EPA in assessing the City's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 program. The inspection schedule is presented in [Appendix 3](#).

The EPA Inspection Team obtained its information through a series of interviews with representatives from the City, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

- |                       |   |
|-----------------------|---|
| City Representatives: | Mr. Jim Newby, Director of Administration<br>Mr. Neal Mills, Director of Planning<br>Mr. Jay Bautz, Deputy Director of Planning<br>Mr. Jeff Keithley, Inspections Manager<br>Mr. Larry Parks, Director of Public Works<br>Mr. Bill Reeder, Deputy Director of Public Works (Construction)<br>Ms. Donna Geiger, Deputy Director of Public Works (Water & Sewer)<br>Mr. Joe Conaway, Deputy Director of Public Works (Streets & Infrastructure) |
| EPA Representatives:  | Mr. Andrew Dinsmore, EPA Region III<br>Ms. Kyle Zieba, EPA Region III<br>Ms. Michelle Price-Fay, EPA Region III<br>Ms. Lori Kier, EPA Region III  |
| EPA Contractors:      | Mr. Bobby Jacobsen, PG Environmental, LLC<br>Ms. Jan McGoldrick, PG Environmental, LLC  |

A sign-in sheet from the onsite inspection is included as [Appendix 4](#).

## **CITY OF HAVRE DE GRACE BACKGROUND**

The City has been developing and implementing its MS4 program since 2003. The City submitted its NOI for coverage under the Permit in June 2003. At the time of the inspection, the City was in MS4 permit year 11. City staff members explained the City's Planning Department and Department of Public Works share responsibilities for meeting the terms of the Permit. In general, the Planning Department undertakes the permitting, plan review, and code enforcement functions, while the Public Works Department maintains stormwater system assets and all municipal facilities.

According to the U.S. Census Bureau, the City of Havre de Grace has an estimated total land area of 5.50 square miles (2010) and an estimated population of 13,392 (2012). The City owns and operates its own water and wastewater treatment systems.

The City's Director of Planning and Director of Public Works explained the City does not have a designated fee or enterprise fund for erosion and sediment control or stormwater management. The City's activities in these areas are funded through the general budget. Neither the Planning Department nor the Public Works Department has a separate line item for stormwater. The majority of the costs for these programs are personnel related. The Director of Planning reported that five of eight Planning Department staff are involved in the MS4 program. The Director of Public Works indicated that although several Public Works staff are involved, the Department's overall personnel commitment is approximately three full-time equivalents. The Director of Planning further noted the City has effectively engaged students and citizen groups in conducting stormwater-related activities.

## **INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS**

During the inspection, the EPA Inspection Team obtained documentation and other supporting evidence regarding compliance with the Permit. Pertinent information may have been obtained prior to, and/or after, meeting with City staff during the physical inspection and is presented in this report as observations.

Referenced documentation used as supporting evidence is provided in [Appendix 5](#), Exhibit Log, and photograph documentation is provided in [Appendix 6](#), Photograph Log. A complete list of documents obtained as part of the overall inspection process is provided in [Appendix 7](#), Document Log.

Before the inspection, the EPA Inspection Team formally requested the City provide specific documentation for review prior to and at the time of the inspection. The EPA Inspection Team provided the City with a written list of requested records on January 6, 2014 (hereinafter, EPA Records Request; [see Appendix 5, Exhibit 1](#)). The City made numerous documents available to the EPA Inspection Team prior to and during the onsite inspection. Following onsite discussions, the EPA Inspection Team requested additional program documentation via e-mail on January 21, 2014 to which the City responded. In addition, the City provided a completed table in response to the records request (hereinafter, City Response Inventory; [see Appendix 5, Exhibit 2](#)).

The report below describes and outlines Permit requirements with specific sections cited, the related requirements, and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Parts of the Permit are restated with the observations concerning those requirements listed below. The Permit incorporates state regulations by reference under the construction and post-construction minimum control measures; therefore, in these sections of the report, the EPA Inspection Team also provides applicable regulatory requirements from the *Code of Maryland Regulations* (COMAR).

### **MINIMUM CONTROL MEASURE 3: ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE) PROGRAM**

Permit Part III.C requires the City to develop, implement, and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable. The Permit requires the program to include field screening activities for storm drain system outfalls, storm drain system inspections for the purpose of identifying the source of any illicit discharges, elimination of any illegal connection or illicit discharge to the storm drain system, and enforcement of penalties where appropriate. Permit Part III.C also requires the illicit discharge program to contain components to address illegal dumping and spills.

**Permit Part III.C.1 (Storm Sewer System Map)**—The Permit requires the City to develop and maintain a map showing the extent of its storm drain system.

**Observation 1:** At the time of the inspection, the City’s GIS-based map did not show the extent of the storm drain system. The Director of Planning explained the City has engineered plan set maps of all storm sewer system assets but has, to date, only captured about 40 percent of those assets on a Web-hosted, geographic information system (GIS)-based map. City staff explained high school students from a local math and science magnet program assisted the City with capturing global positioning system (GPS) location data for storm sewer assets (including outfalls) in the section of the City referred to as “Old Town.” This work was completed in 2013. The Director of Planning indicated the City was in the process of initiating another project with a high school student to capture GPS location data for storm sewer assets in an additional section of the municipality.

**Observation 2:** During field visits, the EPA Inspection Team observed discrepancies between the GIS map and the actual location of some storm sewer outfalls. For example, some mapping information at the “Lily Run” outfall near the intersection of Park Drive and North Adams Street appeared inaccurate to the EPA Inspection Team. Specifically, the map does not identify an outfall to Lily Run along its bank to the northeast of the box culvert opening where Lily Run becomes an open air channel (see Appendix 6, Photograph 1). It was unclear if the pipe segment and outfall shown on the map were in the incorrect location or whether there was an additional pipe segment and outfall which were not depicted.

In addition, the City's map identifies an outfall to the "Loch House Pond" to the northwest of the marina; however, the EPA Inspection Team and City staff could not locate this outfall while onsite (see [Appendix 6, Photographs 2 and 3](#)). A storm drain inlet identified on the map to the south of the Loch House Pond was full of accumulated material, such as sediment, leaves, and debris (see [Appendix 6, Photograph 4](#)). The City's Inspections Manager and Deputy Director of Public Works, Streets and Infrastructure stated the need for inlet cleaning at this location would be entered into the City's work order system and the work would be carried out soon after the end of the inspection. [Appendix 5, Exhibit 4](#) includes a screenshot of the City's map and denotes the discrepancies described above.

**Permit Part III.C.3 (Field Screening)**—The Permit requires the City to develop and implement procedures to field screen storm drain outfalls on a consistent basis.

**Observation 3:** It appears that the City does not have procedures to field screen storm drain outfalls on a consistent basis. City representatives indicated they had not developed or implemented standard operating procedures (SOPs) to field screen storm drain outfalls on a consistent basis. The Inspections Manager, however, explained he visits some outfalls as his schedule allows, though it is not part of a formal process or program.

The Inspections Manager indicated he had not received formal training on how to perform outfall screening inspections; however, he explained he generally knows what to look for given his years of experience with the program. During site visits to selected outfalls on January 17, 2014, the City's Inspections Manager explained he looks for evidence of oil on standing water surfaces, the presence of debris and trash, and anything that might indicate an illegal discharge had occurred. He records his field observations in a composition notebook.

In its 2009–2012 annual reports, the City notes one of its best management practices (BMPs) for the IDDE minimum control measure to be "visual monitoring during storm events and dry weather." With regard to its implementation or completion date for this BMP, the City indicates "ongoing; daily process."

**Permit Parts III.C.4 and 5 (Sources of Illicit Discharges and Enforcement and Penalty Procedures)**—The Permit requires the City to have inspection procedures for identifying the sources of any suspected illicit discharges to the storm drain system. It further requires the City to have enforcement and penalty procedures.

**Observation 4:** At the time of the inspection, the City did not have inspection procedures for identifying the sources of illicit discharges to the storm drain system.

City representatives explained they do not have formal, written SOPs for identifying sources of illicit discharges to the City's storm drain system. Sources are typically identified in one of three ways: via observation by the Inspections Manager during field screening exercises, via consumer complaints, and via the City's other code inspectors such as those who perform inspections prior to the City's issuance of use and occupancy permits. The Inspections Manager indicated the City tends to respond to sources of illicit discharges on a case-by-case basis.

**Observation 5:** At the time of the inspection, the City did not have enforcement and penalty procedures regarding illicit discharges. The City did not have written procedures for conducting or tracking specific follow-up actions related to observed illicit discharges. City staff indicated follow-up actions may be documented in the City's work order and code enforcement databases (Edmunds software). The City provided the EPA Inspection Team with copies of some example work orders resulting from consumer complaints from the Edmunds system (see [Appendix 5, Exhibit 5](#)). The work orders convey such information as work order number, service and property location, date call received and from whom, service code (based on type of problem being experienced), City staff member assigned to respond, details of the complaint, and status of the order. The EPA Inspection Team observed the City's specific response actions were not always noted on the example work orders provided, even though their status is noted as complete. During onsite discussions, City representatives indicated they typically respond within the hour and at most within the day on stormwater-related calls.

#### **MINIMUM CONTROL MEASURE 4: CONSTRUCTION SITE STORMWATER RUNOFF CONTROL PROGRAM**

Permit Part III.D requires the City to adhere to Maryland Environment Article, Title 4, Subtitle 1, *Annotated Code of Maryland* (hereinafter, Sediment Control Subtitle), which establishes a statewide erosion and sediment control program, to control construction site stormwater runoff. This statute, coupled with the COMAR, requires local programs to control erosion and sediment on any construction activity that disturbs 5,000 square feet or more of earth.

COMAR 26.17.01.02 (General Provisions) states that an acceptable erosion and sediment control program will include:

1. *An effective erosion and sediment control ordinance (or an effective set of erosion and sediment control regulations) approved by MDE.*
2. *A process for reviewing and approving erosion and sediment control plans in accordance with the "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control."*
3. *Requirements for erosion and sediment control plans to provide effective erosion and sediment control strategies (i.e., BMPs) and information necessary to enable the proper installation and maintenance of these strategies.*

4. *In delegated jurisdictions, inspection and enforcement procedures that ensure compliance with the approved erosion and sediment control plan and provide for timely response to citizen complaints.*

COMAR 26.17.01.11 states that the *2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control* shall serve as the official guide for erosion and sediment control principles, methods, and practices.

**COMAR 26.17.01.03 (Delegation of Enforcement Authority)**—Each county or municipality may seek delegation of enforcement authority from the MDE secretary to enforce compliance with an approved erosion control ordinance, approved erosion and sediment control regulations, and approved erosion and sediment control plans. Delegation of enforcement authority, if granted, is to be effective for no more than two years, unless renewed by the MDE secretary.

**Observation 6:** During onsite discussions, City representatives noted the municipality has not sought delegation of erosion and sediment control enforcement authority from MDE. As a result, MDE is responsible for enforcing the state's erosion and sediment control laws in Havre de Grace.

**COMAR 26.17.01.04 (Erosion and Sediment Control Ordinance)**—Each county and municipality shall adopt an erosion and sediment control ordinance in compliance with the intent and requirements of the Sediment Control Subtitle. Ordinances must be approved by MDE.

**Observation 7:** City representatives noted the municipality's requirements for erosion and sediment control are provided in Chapter 89 (Grading and Filling) of the Code of the City of Havre de Grace. The City's code at §89-2 requires any developer, person, firm, or governmental agency to obtain a permit prior to engaging in any clearing, grading, or filling of land; processing of earthy materials; or other practices involving earth movement. The section further requires such work to be subsequently performed in accordance with permit requirements.

**COMAR 26.17.01.08 (Approval or Denial of Erosion and Sediment Control Plans)**—This regulation states the following concerning erosion and sediment control plan approval:

1. *The approval authority<sup>1</sup> shall review and approve an erosion and sediment control plan in accordance with the criteria contained in the "2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control."*
2. *The approval authority shall assess the adequacy of the proposed erosion and sediment control measures to minimize erosion and keep sediment onsite.*

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<sup>1</sup> "Approval authority means the soil conservation district, municipal corporation, specified agency, Commission, or the Administration [MDE] that is authorized by or pursuant to Environment Article, §4-105, Annotated Code of Maryland, to review and approve erosion and sediment control plans for the given jurisdiction." (COMAR 26.17.01.07)



3. *When appropriate, an onsite evaluation shall be conducted as part of the review process in order to provide proper consideration of existing conditions and proposed control measures.*

**Observation 8:** The City's Planning Department works with the Harford County Soil Conservation District (SCD) to review and approve erosion and sediment control plans prior to issuing grading permits for construction projects within the City. Projects include all new development and redevelopment as well as City infrastructure improvements exceeding 5,000 square feet or 100 cubic yards of soil disturbance.

Harford SCD reviews and approves (green-stamps) erosion and sediment control plans for projects greater than 30,000 square feet of land disturbance. City representatives stated they had worked with both MDE and Harford SCD to develop a standard plan for projects less than this size. The City's Deputy Director of Planning reviews the plans for projects between 5,000 and 30,000 square feet of land disturbance. He informed the EPA Inspection Team he compares the plan to state regulations and documents the results of his review.

The City does not issue a grading or building permit until the erosion and sediment control plan has been approved by the SCD and the City's Director of Public Works. This practice is in keeping with requirements at COMAR 26.17.01.02.D that a building or grading permit may not be issued by a county or municipality prior to erosion and sediment control plan approval.

**COMAR 26.17.01.06 (Staff Training and Certification)**—This regulation states the following concerning staff training and certification under the erosion and sediment control program:

1. *The Administration [MDE] shall require certification of responsible personnel as established by the Sediment Control Subtitle and in accordance with this regulation.*
2. *Certification is obtained by completing an Administration-approved training program.*
3. *Certification is valid for 3 years and is automatically renewed unless the Administration notifies the certificate holder that additional training is required.*

**Observation 9:** The City's Inspections Manager noted he and two of his staff perform inspections of active construction projects, and each inspector has received erosion and sediment control training from MDE and holds a "green certification card."

**COMAR 26.17.01.09 (Inspection and Enforcement)**—This regulation requires the appropriate enforcement authority to inspect sites with an approved erosion and sediment control plan an average of once every two weeks for compliance with the approved plan. Further, this regulation states the following concerning erosion and sediment control inspection and enforcement:

*When conducting an inspection, the appropriate enforcement authority shall:*

- 1. Ensure that an approved erosion and sediment control plan and permits are on the site as required;*
- 2. Conduct a complete inspection of the site unless otherwise indicated;*
- 3. Prepare a written inspection report that includes:*
  - a. The date and location of this site inspection;*
  - b. Whether the approved plan has been properly implemented and maintained;*
  - c. Practice deficiencies or erosion and sediment control plan deficiencies;*
  - d. If a violation exists, the type of enforcement action taken; and*
  - e. If applicable, a description of minor or major modifications as described in this regulation; and*
- 4. Notify the on-site personnel and the owner/developer in writing when violations are observed, describing the:*
  - a. Nature of the violation;*
  - b. Required corrective action; and*
  - c. Time period in which to have the violation corrected.*

COMAR 26.17.01.09 further requires the appropriate enforcement authority to accept and investigate complaints regarding erosion and sediment control concerns from any interested party. The enforcement authority is to conduct an initial investigation within three working days of receipt of the complaint; notify the complainant of the initial investigation and findings within seven days of receipt of the complaint; and take appropriate action when violations are discovered during the course of the complaint investigation.

**Observation 10:** The City's Inspections Manager explained the City's inspectors generally visit active construction projects on a daily basis and may make observations regarding erosion and sediment control issues. The City's inspectors also inspect completed construction projects. City staff explained MDE is ultimately responsible for inspecting project sites in the City for compliance with approved erosion and sediment control plans and for taking enforcement action when necessary. The City's Inspections Manager noted that he was not aware of MDE site inspections which had occurred recently within the City. He indicated the MDE inspector who had been covering their area recently moved to another state.

**Observation 11:** It appears that the City is not preparing written inspection reports detailing whether the approved plan and erosion and sediment control practices have been properly implemented and maintained. During the site visit to the Bulle Rock Construction Project on January 16, 2014, the City's Inspections Manager described and explained his typical process for conducting inspections and oversight for erosion and sediment control. The Inspections Manager stated he, or one of his construction inspectors, typically visits each site on a daily basis. While onsite inspectors observe erosion and sediment controls, particularly inlet protection; perimeter control (e.g., silt fence); and construction entrances. The Inspections

Manager further indicated the City's inspectors do not use a standard inspection form or checklist to document the occurrence of or observations from their inspections. They typically take photographs of observed issues and send an e-mail or text message via cellular telephone to alert the appropriate site contact (e.g., site superintendent) of the issues and corrective action required.

The Inspections Manager explained the City has been successful in achieving compliance in this way. He further noted the City's role as a non-delegated entity is to educate and achieve compliance. MDE's role is to undertake enforcement. City representatives indicated, however, they can and do use other authorities to achieve compliance. For example, they might issue a stop work order or hold up issuance of another permit (e.g., a use and occupancy permit). In its 2010–2012 MS4 annual reports, the City noted it was instituting enforcement measures to include stop work orders and fines.

**Observation 12:** At the time of the inspection, the City did not have an enforcement response plan (ERP) or other procedural document describing when and how enforcement should be escalated and under what circumstances penalties, if any, should be assessed. According to City staff, the municipality's ordinances provide City inspectors with the enforcement tools they need to ensure compliance with the municipality's erosion and sediment control and stormwater management requirements.

**Observation 13:** During the on-site inspection, the EPA Inspection Team visited sites related to the City's construction site stormwater runoff control at three privately owned and operated construction projects and one public construction project within the City: (1) Bulle Rock Development, (2) Scenic Manor, (3) Greenway Farm, and (4) Citizen's Care Park.

#### **Private Construction Site—Bulle Rock Development**

The Bulle Rock Construction Project is located in the western portion of the City. According to the City's Inspections Manager, the project started in about 2004 and was planned for 2,126 individual units at build out. Manekin and Harbor East are the developers for the project, which includes multiple phases and parcels. The EPA Inspection Team visited three different active parcels (Parcel E—Section 2, Parcel D—Section 2, and Parcel O) and a construction staging area during the onsite inspection. Two of the parcels (Parcel E—Section 2 and Parcel O) were in the vertical construction phase with individual homes being built at the time of the site visit. Parcel D—Section 2 was still in the grading phase and did not have active vertical construction. The City's Inspections Manager explained that the builders for the individual home sites are required to install erosion and sediment controls to prevent stormwater pollution based on the request and direction of the City's Inspections Manager. He added that

when there is an issue requiring correction he typically communicates with a representative from the project developer or builder (e.g., site superintendent) rather than the onsite workers.

The EPA Inspection Team observed the following with regard to erosion and sediment controls and stormwater management at the construction project and discussed observations with the City's Stormwater Inspector during the site visits:

*Parcel E—Section 2—Risen Star Court*

- a. There was a gap between the storm drain inlet protection BMP and a drain inlet on the south side of Risen Start Court (see Appendix 6, Photographs 5 and 6). The City's Inspections Manager explained the inlet protection BMP had been refreshed on the Monday preceding the EPA inspection. He stated he had asked the contractor or developer to refresh the inlet protection BMPs at the project two or three times before it was actually done. He stated he would ask the contractor or developer to ensure the inlet protection BMP was pushed fully against the curb to eliminate the gap.
- b. A section of silt fence along the northwestern perimeter of Lot 727 adjacent to a disturbed area had been removed or had collapsed and sediment was present in the adjacent gutter (see Appendix 6, Photograph 7).
- c. Concrete waste was present on the ground surface in various locations at Lot 727 (see Appendix 6, Photographs 8 and 9).

*Parcel D—Section 2—Gallant Fox Drive*

- d. Accumulated sediment was observed within the rock-lined construction entrance to Snow Chief Drive on the western side of the project (see Appendix 6, Photographs 10 and 11).
- e. Sediment was present in and around a storm drain inlet surrounded by super silt fence in a disturbed area along the northern perimeter of the site (see Appendix 6, Photographs 12 and 13).
- f. Straw and tackifier material was present in and around a storm drain inlet surrounded by super silt fence in a disturbed area near the northeastern corner of the site (see Appendix 6, Photographs 14 and 15).

*Parcel O*

The City's Inspections Manager explained Lennar Homes was the builder in this parcel and construction started approximately one month prior to the EPA Inspection Team's site visit.

- g. The City's Inspections Manager noted and documented there was a gap between the storm drain inlet protection BMP and the curb near

the southeastern corner of the site (see Appendix 6, Photographs 16 and 17). Accumulated sediment was present adjacent to the inlet and BMP.

- h. Sediment was present in and around a storm drain inlet surrounded by super silt fence in a disturbed area along Dark Star Circle in the southeastern portion of the site (see Appendix 6, Photographs 18, 19, and 20). Evidence of erosion was present upgradient of the storm drain inlet (see Appendix 6, Photograph 21).
- i. Sediment and straw was present in and around a storm drain inlet approximately 225 feet to the west of the drain inlet described in the previous observation (see Appendix 6, Photographs 22 and 23).
- j. Turbid water from the sedimentation basin in the southeastern corner of the site was observed flowing into a waterbody to the east of the sedimentation basin (see Appendix 6, Photographs 24 and 25). The drainage channel from the sedimentation basin to the waterbody appeared to be eroded, though it was unclear whether flows from the sedimentation basin had eroded the channel or flow from the sedimentation basin had been directed to an existing drainage channel (see Appendix 6, Photographs 26 and 27).
- k. Sediment from vehicle tracking was present on the impervious roadway surface in multiple locations throughout the construction site (see Appendix 6, Photographs 28, 29, and 30).
- l. Concrete was present on the ground surface in various locations throughout the construction site (see Appendix 6, Photographs 31 and 32) though there was a designated concrete washout location at the site (see Appendix 6, Photograph 33).
- m. Sediment and straw was present in and around several storm drain inlets surrounded by super silt fence in disturbed areas in the northern and western portions of the site (see Appendix 6, Photographs 34 through 39).
- n. Sediment had overtopped and collapsed a section of silt fence in the northeastern portion of the site (see Appendix 6, Photographs 40 and 41).
- o. During the site visit, the City's Inspections Manager called the Lennar Homes site superintendent to address issues regarding the storm drain inlets and concrete waste.

#### *Staging and Maintenance Area*

- p. Sediment from vehicle tracking was observed from the staging and maintenance area at the intersection of Blenheim Lane and Zachman Way (see Appendix 6, Photographs 42 and 43). The City's Inspections Manager explained this area was used for both construction staging and for storing maintenance materials by the development's landscape and maintenance contractor, Brickman.

### **Private Construction Site—Scenic Manor**

City staff explained the project was issued a stop work order in August 2012, though the project has been allowed to conduct some activities to ensure erosion and sediment controls, including sedimentation basins, were maintained (see Appendix 6, Photographs 44 and 45). The City's Inspections Manager stated he had visited the site approximately three months prior to the EPA's inspection to evaluate erosion and sediment controls. The site was approximately 25 acres in total size and had two sedimentation basins which are planned to be converted to permanent stormwater management basins.

### **Private Construction Site—Greenway Farm**

The City's Inspections Manager explained phase one of the project had been partially built out but not completed (see Appendix 6, Photograph 46), and phases two and three had been mass graded but were not being built. There was no active construction at the time of the site visit. The EPA Inspection Team observed deteriorated inlet protection BMPs on a couple of storm drain inlets in the interior of the project (see Appendix 6, Photographs 47 and 48). The City's Inspections Manager stated these would be removed since there is no active construction or disturbed area near the inlets.

### **Public Construction Site—Citizen's Care Park**

According to City staff, the project started in early December 2013 but was stopped due to inclement weather. The project consisted of installing walking paths, pervious pavers, exercise equipment, and rain gardens to accept stormwater runoff from the surrounding impervious parking lot (see Appendix 6, Photographs 49 and 50). The entire lot was approximately 1.6 acres with less than an acre of disturbance.

## **MINIMUM CONTROL MEASURE 5: POST-CONSTRUCTION STORMWATER MANAGEMENT**

Permit Part III.E requires the City to adhere to Maryland Environment Article, Title 4, Subtitle 2, *Annotated Code of Maryland* (hereinafter Stormwater Management Subtitle), which establishes a statewide stormwater management program. This statute, coupled with COMAR, requires that stormwater management for new development and redevelopment be addressed for any proposed project that disturbs 5,000 square feet or more of earth.

COMAR 26.17.02.03 states that an acceptable stormwater management program will include:

1. *A Water Management Administration-approved [MDE-approved] stormwater management ordinance.*
2. *Stormwater management planning and approval processes that provide stormwater management for every land development subject to COMAR 26.17.02, implementation of environmental site design (ESD) to the maximum extent practicable (MEP), and the*

*ability and the information necessary to review adequately proposed installation and maintenance measures for stormwater management.*

3. *Inspection and enforcement procedures that ensure the proper construction and maintenance of approved stormwater management measures.*

**COMAR 26.17.02.04 (Stormwater Management Ordinances)**—This regulation requires the City to implement local stormwater program ordinances to address the following:

1. *A comprehensive stormwater management plan review and approval process.*
2. *Exemptions and waivers.*
3. *Criteria and procedures for stormwater management.*
4. *Proper implementation of stormwater management in accordance with the approved plan.*
5. *Maintenance responsibilities and requirements including periodic inspection.*
6. *Penalties for noncompliance with the ordinances, including suspension of construction activities when appropriate.*

**Observation 14:** During onsite discussions, City representatives provided the EPA Inspection Team with a copy of the municipality's latest stormwater management ordinances: Ordinances 912 and 920. The ordinances are provided in Chapter 169 (Stormwater Management) of the Code of the City of Havre de Grace. The ordinances incorporate the *2000 Maryland Stormwater Design Manual, Volumes I and II* and all subsequent revisions by reference. City staff explained the municipality makes changes to its code as necessary when the state updates its regulations.

**Observation 15:** The City's Deputy Director of Planning noted his office is responsible for reviewing stormwater management plans. He indicated, however, the City contracts with a third-party engineer to review plans for large projects (i.e., those with 30,000 square feet or more of disturbance). The City does not have its own engineer on staff.

Section 169-12 of the City code requires owners/developers to submit phased stormwater management plans for the concept, site development, and final stormwater management construction phases of a project design at a minimum. The Deputy Planning Director indicated developers are not typically meeting the one-inch capture requirement in their first plan submittals. He explained he finds it takes some back and forth communication between the City and the developer to achieve this requirement. The Deputy Planning Director further indicated the City tracks and monitors the plan review process, generally by maintaining a chronological file on each project. Pursuant to §169-16 of the City code, the municipality does not issue a grading or building permit until the City has approved the erosion and sediment control and stormwater management plans.

The City's 2009–2012 MS4 annual reports indicate the municipality intends to incorporate more pervious surfaces into its post-construction standards as a measurable goal for the post-construction minimum control measure. The EPA Inspection Team did not discuss this item specifically during onsite meetings.

**COMAR 26.17.02.11 (Inspection and Maintenance)**—This regulation states the following concerning post-construction stormwater management facility maintenance and routine inspections:

*Maintenance requirements established in this regulation shall be contained in all county and municipal ordinances and shall provide for inspection and maintenance. The owner shall perform or cause to be performed preventive maintenance of all completed ESD treatment practices and structural stormwater management measures to ensure proper functioning. The responsible agency of the county or municipality shall ensure preventive maintenance through inspection of all stormwater management systems. The inspection shall occur during the first year of operation and then at least once every 3 years after that.*

**Observation 16:** The EPA Inspection Team's file review observed discrepancies between the inventory and list of inspections. City staff explained there are approximately 75 post-construction BMPs within the City. Of this number, three are underground devices, two are sand filters, five are undetermined, and the remaining are ponds. The Inspections Manager explained he maintains an inventory of post-construction BMPs (see Appendix 5, Exhibit 6). The list identifies approximately 66 BMPs, the majority of which are privately owned. The EPA Inspection Team compared the list of BMPs with the City's post-construction BMP inspection files and observed some potential discrepancies. For example, the inspection records suggest the Grace Manor facility has two BMPs as opposed to three listed on the inventory.

**Observation 17:** The Inspections Manager indicated he schedules inspections using the inventory referenced above. He explained inspections are generally performed annually and more frequently if problems are identified. The Inspections Manager further indicated the inspection process is the same for privately or publicly owned BMPs. The EPA Inspection Team compared the above noted BMP inventory with the City's post-inspection BMP inspection files and observed that multiple BMPs have not been inspected annually.

**Observation 18:** The City does not have written SOPs for conducting inspections of post-construction BMPs. The City's Inspections Manager explained he attended a post-construction BMP inspection training workshop put on by a Harford County staff member in 2011. He added that for additional training he accompanied the Harford County inspector on a day of her own scheduled post-construction BMP inspections.



The Inspections Manager uses one or more inspection sheets developed by Harford County as checklists for post-construction BMP inspections. He explained for each inspection he records his observations in a composition notebook and then completes a county inspection sheet which is maintained in a binder.

**Observation 19:** The inventory of post-construction BMPs consists generally of ponds. The Inspections Manager said the majority of the ponds were designed under Maryland's 2000 standards and specifications. The Inspections Manager noted he generally performs pond inspections from the first of April to the end of October to observe vegetation. The City's 2009–2012 MS4 annual reports indicate the City has put pond maintenance practices in place and is enforcing against them. The City did not provide additional details.

**Observation 20:** The City's Inspections Manager indicated when an issue is observed with a private post-construction stormwater management pond, his office sends a letter via certified mail (NOV) to responsible parties. The City gives the owner 30 days to remedy the problem. City staff said they are generally able to achieve compliance in this manner. Achieving compliance, however, can take from 30–90 days.

The City has developed a homeowners association (HOA) list that includes a contact name and number for each association. The contact is usually the president or the HOA's contractor. This is who would receive the certified letter noted above. The Inspections Manager indicated it can be time consuming and painful to track down responsible parties, especially those with HOAs.

**Observation 21:** City representatives indicated the City code requires an applicant(s) or owner(s) of land served by a private stormwater management facility to execute a maintenance agreement binding on all subsequent owners. The agreement is recorded with the property deed (see Appendix 5, Exhibit 7). City staff stated they have the ability to hire contractors to fix problems associated with post-construction BMPs and place a lien on the owner's property. They have not had to do this as far as the staff interviewed could determine. The Inspections Manager, however, indicated he has had to pull the maintenance agreements and show them to property owners to spur action. City staff explained the maintenance agreements do not delineate specific maintenance tasks for particular BMPs. Rather, responsible parties are to adhere to their stormwater management plans which the City keeps copies of on file.

**Observation 22:** During the on-site inspection, the EPA Inspection Team visited sites related to the City's post construction stormwater management MCM. Two privately owned and operated stormwater management facilities were visited: (1) Lorien Health Systems Facility Pond, and (2) Bulle Rock Estates Oak Tree Drive Pond.

### **Post-Construction Stormwater Management Facility—Lorien Health Systems Facility Pond**

The BMP is a permanent stormwater management retention basin which primarily receives stormwater runoff from the adjacent parking lot and building roof surface (see [Appendix 6, Photograph 51](#)). According to the City's Inspections Manager, the BMP was originally installed as a temporary sedimentation basin in 2005 and converted to a permanent basin in July 2013. The City's Inspections Manager explained and demonstrated his post-construction BMP inspection process during the site visit and did not note any significant issues.

### **Post-Construction Stormwater Management Facility—Bulle Rock Estates Oak Tree Drive Pond**

The BMP is a permanent stormwater management retention basin which primarily receives stormwater runoff from the upgradient roadway surface and single-family home lots (see [Appendix 6, Photograph 52](#)). According to the City's Inspections Manager, the BMP is owned by the HOA and has "sediment markers" in the pond to help determine when sediment needs to be removed from the pond (see [Appendix 6, Photograph 53](#)). The City's Inspections Manager was not certain how the sediment markers were to be used in this pond.

## **MINIMUM CONTROL MEASURE 6: POLLUTION PREVENTION AND GOOD HOUSEKEEPING**

Permit Part III.F requires the City to implement and maintain pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations. The Permit indicates the components of the measure are to include municipal employee training materials to prevent and reduce pollutant discharges to the storm drain system, runoff controls geared toward fleet yard and building maintenance activities, and procedures for ensuring all municipally owned activities are properly permitted under NPDES or any other state or federal water pollution control program. The Permit further states the City is either to develop pollution prevention/good housekeeping procedures itself or rely on another responsible entity for compliance. If the latter, the Permit recommends an memorandum of understanding (MOU) or other binding contract be executed to define responsible parties should noncompliance become an issue.

**Observation 23:** During the on-site inspection, the EPA Inspection Team visited sites related to the City's pollution prevention and good housekeeping MCM. City staff explained the municipality has approximately five sites that require pollution prevention and good housekeeping practices: (1) the Department of Public Works (DPW) Collection Site; (2) the wastewater treatment plant (WWTP); (3) the Salt Storage Facility, which is located at the WWTP; (4) the DPW Operations Center and Maintenance Shop

(including Fuel Pumps); and (5) the Recycle Center (see Appendix 5, Exhibit 2, Item 28).

### **Municipal Facility—DPW Collection Site**

DPW's Collection Site is located off Quarry Road, near the Police Shooting Range, in the northeastern quadrant of Havre de Grace, Maryland. The site is located on a hilltop that drains to the Susquehanna River. The City representative noted the municipality uses the site to temporarily store mulch, brush, street sweepings, concrete, blacktop, and excavated material. Appendix 5, Exhibit 8 provides an aerial view of the site. Equipment was not stored at the site at the time of the visit.

The site has one access road. It leads from the northwestern edge of the site upward in a southeasterly direction where it levels out upon reaching the hilltop. The EPA Inspection Team observed several storage bays on each side of the access road. The ground surface of the transport road and storage bays consisted of dirt and bluestone. The surrounding hillside was forested (see Appendix 6, Photograph 54).

The Deputy Director of Public Works, Streets and Infrastructure explained the City had made significant changes to the grading and organization of the site in recent years based on an MDE site visit performed August 14, 2009. In a February 19, 2014 e-mail following onsite discussions, the Director of Planning reported the collection site has coverage under MDE's General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 12-SW; hereinafter, Industrial General Permit).

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the collection site:

- a. A filtration stone BMP was installed near the southern edge of the facility (see Appendix 6, Photograph 55). The Deputy Director of Public Works, Streets and Infrastructure indicated the municipality had recently made repairs to the BMP where leaks had been observed. A silt fence was observed to be partially covered by sediment and leaves (see Appendix 6, Photograph 56). An additional filtration stone BMP was observed down gradient of the silt fence (see Appendix 6, Photograph 57).
- b. Tire tracks from trucks loading and dispensing material were observed at the site. These were especially prevalent in the mulch and brush holding areas, located on the northwestern edge of the hilltop. The loading and dispensing areas in the bays were observed to have little stone as did the access road (see Appendix 6, Photographs 58, 59, and 60). Note the site experienced light to moderate precipitation one or two days prior to the onsite inspection.

- c. Two dumpsters were observed at the site. One held dirt spoils while the second held concrete debris (see Appendix 6, Photographs 61 and 62).

### **Municipal Facility—WWTP**

The City's WWTP is located at One Jerry Foster Way in Havre de Grace, Maryland. The facility resides in the southernmost point of the City and is bounded on its northern and eastern sides by the Upper Chesapeake Bay. The facility provides tertiary treatment of wastewater and has a design capacity of 3.3 million gallons per day (mgd). The City's Deputy Director of Public Works, Water and Sewer stated the current average flow of the facility is approximately 1.4 mgd. The plant was recently upgraded, and, as part of that process, the facility converted from chlorine to ultraviolet (UV) disinfection.

City representatives reported the municipality's WWTP has coverage under MDE's Industrial General Permit and has an associated stormwater pollution prevention plan (SWPPP) (see Appendix 5, Exhibit 2, Items 32 and 34). The WWTP has 22 storm drain inlets and five swales, which discharge to one of three stormwater outfalls. Two of the stormwater outfalls discharge to the Chesapeake Bay and the third discharges to Concord Cove (see Appendix 6, Photograph 63). The City has installed silt fences around the perimeter of the property to prevent sediment from being conveyed offsite. The storm drains, swales, and silt fence are inspected as components of the semiannual inspections.

The WWTP Operator (Mr. Dave Watson) stated he conducts semiannual formal inspection of storm drain inlets and swales at the WWTP, once in the spring and again in the fall each year and documents his findings on a formal inspection form as contained in the facility's SWPPP (see Appendix 5, Exhibit 9). MDE inspects the plant, including stormwater management operations, annually. Note that MDE's Industrial General Permit requires at least quarterly routine inspections; an annual, comprehensive site compliance evaluation; and quarterly visual inspections unless the site has qualified as an inactive and unstaffed site. In the latter case, only the comprehensive annual inspection needs to be performed. All inspections are to be documented.

The WWTP Operator stated he walks the grounds of the facility daily and inspects the stormwater inlets for blockages or other problems and ensures the swales are clean and mowed. The EPA Inspection Team shadowed the WWTP Operator on a walk of the inlets and swales during the onsite visit.

The WWTP Operator stated he does not keep records of his daily inspections of storm drain inlets and swales. He indicated, however, if he

were to identify a problem, he would alert the WWTP supervisor and any necessary repairs or maintenance would, in turn, be scheduled.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the WWTP:

- a. Runoff from the parking lot of the Operations Building flows through a flexible, extended gutter that is connected to a PVC pipe to a storm drain inlet (see Appendix 6, Photograph 64). The drainage emerges above ground in approximately 40 feet in a rip-rapped ditch (see Appendix 6, Photograph 65). The rip-rapped ditch is approximately 10 feet in length and discharges into two known drain pipes that drop vertically to two outfalls below. The EPA Inspection Team observed erosion at the far end of the rip-rapped ditch at the location of the drains (see Appendix 6, Photographs 66 and 67). The Deputy Director of Public Works, Water and Sewer was unable to locate the two outfall pipes on the shoreline at the time of the onsite inspection.
- b. The WWTP has chemical storage and containment areas for methanol, alum, sodium hydroxide, and sodium hypochlorite. The WWTP self-inspects these areas routinely and formally on a semiannual basis under the SWPPP. The Deputy Director of Public Works, Water and Sewer stated the containment totes do not discharge to the WWTP or the facility's stormwater drains. If needed, they are emptied via pumps, provided they do not contain any chemicals. The EPA Inspection Team observed two modular secondary containment platforms near a storm drain outside the chemical house (see Appendix 6, Photograph 68). At the time of the onsite inspection, no chemicals were stored on the platforms; some rainwater from a precipitation event earlier in the week was observed. A storage bin containing sand bags was observed near the chemical storage house (see Appendix 6, Photographs 69 and 70).
- c. The EPA Inspection Team observed two downspouts from the roof of the mulch building to be disconnected from their respective flexible gutter extensions. The EPA Inspection Team observed evidence of overland flows from the downspouts to nearby storm drains and erosion in the flow area (see Appendix 6, Photographs 71, 72, and 73).

### **Municipal Facility—Salt Storage Facility**

The salt storage facility is located on the property of the City's WWTP at One Jerry Foster Way in Havre de Grace, Maryland. It resides to the side of one of the WWTP's access roads, adjacent to a wooded area that slopes downward to the Chesapeake Bay. An aerial photograph of the facility is provided in Appendix 5, Exhibit 10.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the salt storage facility:

- a. Salt was present on the ground surface leading into the salt storage facility and on the adjacent road at the WWTP (see [Appendix 6, Photographs 74, 75, and 76](#)).
- b. No structural BMPs (e.g., berms) were implemented at the entrance of the salt storage facility. The roof of the facility, however, extended outward several feet to protect the entrance area (see [Appendix 6, Photograph 77](#)). Small salt piles were observed at the outer edges of the entrance area (see [Appendix 6, Photograph 78](#)).
- c. On January 23, 2014, subsequent to the onsite inspection, the City provided the EPA Inspection Team with an e-mail and photograph indicating they had cleaned up the salt present on the ground surface leading into the salt storage facility in addition to the salt observed on the adjacent WWTP road (see [Appendix 6, Photographs 79 and 80](#)).

### **Municipal Facility—DPW Operations Center and DPW Maintenance Shop**

DPW's Operations Center and Maintenance Shop are located at 2 and 4 Jerry Foster Way, respectively, in Havre de Grace, Maryland. An aerial view of the facility is provided at [Appendix 5, Exhibit 11](#). The properties reside on the northwestern edge of the WWTP. During onsite discussions, City staff were unclear whether the operations center and maintenance shop collectively had coverage under MDE's Industrial General Permit. Following the onsite inspection, City representatives contacted MDE and were instructed to file an NOI for the facilities along with an SWPPP, which the City completed on February 12, 2014. Maps of the facilities and the location of stormwater catchments and swales are provided on maps attached to the NOI (see [Appendix 5, Exhibit 12](#)).

The combined area of the DPW Operations Center (which includes an office building, equipment storage building, and outdoor parking areas) and DPW Maintenance Shop (which includes a parking area and fuel pump station) is approximately 3.4 acres. Most of the ground surface of the property is impervious. The Deputy Director of Public Works, Streets and Infrastructure stated the pervious surfaces are swept several times per week by the City's street sweeper.

Stormwater from the overall facility flows through the property of the Havre de Grace WWTP and discharges to Concord Cove. The site has two stormwater swales. The first swale is located in a grassy area behind the equipment storage building, while the second is graveled and resides between the maintenance shop and the equipment storage shed of the operations center (see [Appendix 6, Photographs 81, 82, 83, and 84](#)). The City's NOI for coverage under MDE's Industrial General Permit indicates DPW will push and pile snow in the swale area between the equipment / tool building and the maintenance shop.

DPW uses the maintenance shop to repair and service City vehicles. The City contracts out major repair work to third-party entities. It has offsite contracts for washing police and other vehicles.

Collection sheds for materials storage (e.g., gravel, mulch, cold mix blacktop, and topsoil) are located to the west of the entrance gate and perpendicular to the maintenance shop. The sheds are followed by an outside wash bay used for cleaning equipment. The Deputy Director of Public Works, Streets and Infrastructure pointed out how the floor slopes into a basin with a solids separator. He noted the separator is pumped out by the City's vac truck (see Appendix 6, Photograph 85).

The fuel depot, which dispenses diesel and gasoline, is located on the front side of the maintenance shop, near the overall site entrance (see Appendix 6, Photograph 86). The fuel tanks are located inside a containment dike surrounded by concrete barriers (see Appendix 6, Photograph 87). Each tank holds 10,000 gallons of fuel and is double walled. An asphalt berm is located on the downward sloping side of the pavement near the fuel tanks. The drainage pipe in the berm has been sealed (see Appendix 6, Photograph 88). The EPA Inspection Team observed a storage bin containing absorbent pads and kitty litter near the tanks (see Appendix 6, Photograph 89). In its NOI for coverage under MDE's Industrial General Permit, DPW indicates it inspects the fuel tanks twice per week for leaks.

The EPA Inspection Team observed the following with regard to pollution prevention and good housekeeping at the DPW Operations Center and the DPW Maintenance Shop:

- a. The Deputy Director of Public Works, Streets and Infrastructure stated DPW staff conduct routine visual and olfactory examinations of the stormwater swales. These staff, however, do not use checklists or formally document the results of their inspections. The Deputy Director further stated that DPW personnel clean the basins and swales as needed, which averages out to approximately two times per year. WWTP personnel conduct the inspections of the stormwater outfalls.
- b. Heavy equipment and vehicles were parked outside the equipment / tool building of the operations center (see Appendix 6, Photograph 90). A backhoe loader was parked on the swale between the maintenance shop and the equipment storage shed of the operations center (see Appendix 6, Photograph 91).

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**HOWARD COUNTY  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

**Inspection: April, 2013**

Final Report: December, 2013

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**



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## EXECUTIVE SUMMARY

From April 15 through 16, 2013, a inspection team comprising of representatives from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG) collectively the EPA inspection team, conducted an inspection of the municipal separate storm sewer system (MS4) program of Howard County, Maryland.

The purpose of this inspection was to obtain information that will assist EPA in assessing Howard County's compliance with the requirements of its Maryland Pollution Discharge Elimination System Permit Number MD0068322, as well as the implementation status of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning Howard County's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

	Observations
<b>Part E.1.a: Stormwater Management</b>	<p><b>Observation 1:</b> The County tracks the total number of stormwater management facilities (Total SWMFs) inspected in an Access database.</p> <p><b>Observation 2:</b> Based on information provided during the inspection, it appears that the County is on target to inspect all (currently 1,743) Private SWMFs within a triennial cycle.</p> <p><b>Observation 3:</b> Howard County did not inspect 291 out of approximately 1,042 public stormwater management facilities in the past three years.</p> <p><b>Observation 4:</b> Howard County does not appear to conduct routine maintenance inspections of its approximately 1,632 residential "micro-scale" (non-conventional SWMFs) environmental site design best management practices on a triennial basis.</p> <p><b>Observation 5:</b> The inspection team observed potential deficiencies with management practices at the Alpha Ridge Landfill regarding the removal of sediment from the storm water pond forebay.</p> <p><b>Observation 6:</b> The inspection team observed potential deficiencies with management practices at the Cooksville Vehicle Maintenance Shop regarding maintenance of the facility's storm water management pond.</p>
<b>Part E.2.a: Erosion and Sediment Control Program</b>	<p><b>Observation 7:</b> Although MDE granted continued delegation of erosion and sediment control enforcement authority to Howard County, potentially deficient management practices were observed at 2 construction sites.</p>
<b>Part E.3.d: Illicit Discharge Detection and Elimination</b>	<p><b>Observation 8:</b> At the time of EPA's inspection, Howard County had not confirmed elimination of the illicit discharge identified at Lancaster Foods (commercial facility).</p>

**Table 1. Summary of Permit Requirements and Inspection Observations**

<b>Observations</b>	
<b>Part E.4: County Property Management</b>	<b>Observation 9:</b> The EPA inspection team observed potential deficient management practices at the Alpha Ridge Landfill and Cooksville Maintenance Shop regarding wastes including paints, used motor oil, and refrigerants that were exposed to precipitation
<b>Part I.2: Program Funding</b>	<b>Observation 10:</b> The County has approved a Watershed Protection Fee that will provide resources for stormwater management that went into effect October 1, 2013.

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## INTRODUCTION

On April 15 through 16, 2013, an inspection team comprising of representatives from the U.S. Environmental Protection Agency (EPA) Region 3, Maryland Department of the Environment (MDE), and EPA's contractor, Eastern Research Group, Inc. (ERG), collectively the EPA inspection team, inspected the municipal separate storm sewer system (MS4) program of Howard County. Discharges from Howard County's MS4 are regulated by Maryland Pollution Discharge Elimination System Permit Number MD0068322 (the Permit), which is included in Appendix 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing Howard County's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Appendix 2.

The EPA inspection team obtained its information through a series of interviews with representatives from Howard County, along with a series of site visits, record reviews, and field verification activities and subsequent investigation. The primary representatives involved in the inspection were the following:

Howard County:

**Department of Public Works, Bureau of Environmental Services, Stormwater Management Division**

Ms. Cynthia Brouwers, Engineering Specialist III

Mr. Joseph Connolley, Inspector II

Mr. Mark DeLuca, Bureau of Environmental Services Chief

Mr. Jason Hartner, Inspector

Mr. Richard Hoffman, Operations Supervisor

Ms. Angela Morales, Planning Specialist

Mr. Mark Richmond, Project Manager

Mr. Howard Saltzman, Stormwater Management Division Chief

Mr. John Slater, Regulation Supervisor

Ms. Christine Smith, Project Manager

**Department of Public Works, Bureau of Engineering, Construction Inspection Division**

Mr. John Alcorn, Supervisor

Mr. Bob Barnett, Supervisor

Mr. Harold Jarvis, Inspector

Mr. Bryan Kirk, Supervisor

Mr. Don Koelsch, Inspector

Mr. Matt Joyce, Deputy Chief

Mr. John Seefried, Chief

Mr. Steve Wilmer, Construction Manager

**County Administration, Office of Central Fleet**

Mr. Brian Skovira, Fleet Administration

**County Office of Law**

Mr. Lewis Taylor, Assistant County Solicitor

**Department of Technology and Communication, Geographic  
Information Systems Division**

Mr. Robert Slivinsky

Howard County  
Contractors:

Mr. Jim Goldsberry, Inspector, Charles P. Johnson and Associates  
Mr. John Spry, Inspector, Charles P. Johnson and Associates  
Mr. Thomas Jones, Versar, Inc.  
Mr. Charles Tonkin, Versar, Inc.

EPA Representatives:

Mr. Pete Gold, Enforcement Officer  
Mr. Chuck Schadel, Enforcement Officer

MD Department of the  
Environment  
Representatives:

Ms. Dela Dewa  
Ms. Maria Warburton

EPA Contractors:

Mr. Mark Briggs, ERG  
Ms. Kavya Kasturi, ERG  
Ms. Daisy Wang, ERG  
Ms. Kathleen Wu, ERG

For a complete list of all inspection participants, please refer to the sign-in sheets in Appendix 3.

Dry weather conditions were experienced throughout most of the inspection activities. Approximately 0.5 inches of precipitation had fallen during the three days prior to the inspection and approximately 0.15 inches fell in the three days following the inspection<sup>1</sup>.

During the inspection, the EPA inspection team obtained documentation regarding compliance with the Permit. Pertinent information may have been obtained prior and/or after meeting with Howard County staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation is provided in Appendix 4 and referenced photographs are provided in Appendix 5. A complete list of documents obtained is provided as a Document Log in Appendix 6. All documents obtained and all photographs taken during the inspection are on a CD in the file.

The report identifies Permit requirements with specific sections cited and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Sections of the Permit are restated with observations about those requirements listed below.

Additionally, Appendix 7 provides compliance assistance and/or suggestions for program improvements.

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<sup>1</sup> The precipitation data for Howard County was downloaded from the National Oceanic and Atmospheric Administration's (NOAA) National Climatic Data Center (NCDC) – Climate Data Online (CDO) System on May 29, 2013, Available online: <http://www.ncdc.noaa.gov/cdo-web/#t=secondTabLink>.

## HOWARD COUNTY BACKGROUND

Howard County has been developing and implementing its MS4 Program since 1995. Howard County's coverage under the MDE NPDES Municipal Separate Storm Sewer System Discharge Permit program became effective on June 20, 2005 with an expiration date of June 20, 2010. MDE has not issued Howard County a new permit and, the Permit has been administratively continued.

Howard County encompasses approximately 250.74 square miles<sup>2</sup> of land, and is bordered on the north and northeast by the Patapsco River which separates Howard County from Carroll and Baltimore Counties, on the northwest by Frederick County, on the southwest by the Patuxent River which separates Howard County from Montgomery and Prince George's Counties, and on the southeast by Anne Arundel County.

Per Howard County's 2012 Annual Report (Annual Report), the total population of Howard County is estimated to be 292,887 people as of December 2011. Approximately 80 percent of Howard County's MS4 drains to the Patuxent River watershed, and the remaining 20 percent drains to the Patapsco River watershed. The county has subdivided the two primary watersheds into 62 subwatersheds.

Howard County currently has approximately 37 staff and 19 inspectors involved in implementing the MS4 Program. Howard County also uses the services of contractors, including Versar, Inc. and Charles P. Johnson and Associates to conduct inspections. Howard County recently passed a Watershed Protection Fee of \$15 per year for every 500 square feet of impervious surface on a property<sup>3</sup>, which will become effective in July 2013. Based on the amount of impervious surfaces within the county, the Watershed Protection Fee is estimated to generate approximately \$18 million per year. The county had a budget of \$14,692,000 for the 2012 fiscal year and \$12,675,000 for the 2013 fiscal year.

## INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS

This section includes the MS4 permit requirements and the observations made by the EPA inspection team relative to those requirements. The observations presented under the permit requirements do not constitute a formal compliance determination or notice of violation.

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<sup>2</sup>United States Census Bureau. Howard County, MD. Available online: <http://quickfacts.census.gov/qfd/states/24/24027.html>.

<sup>3</sup> The Howard County Watershed Protection Fee. Available online: [http://livegreenhoward.com/beta/wp-content/uploads/2013/05/hoco\\_watershedfeefaqs\\_april2013.pdf](http://livegreenhoward.com/beta/wp-content/uploads/2013/05/hoco_watershedfeefaqs_april2013.pdf)



## Part E – Management Programs

### Part E.1.a&b – Stormwater Management Facility Inspections (Excerpts)

An acceptable stormwater management program shall be maintained in accordance with the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland. At a minimum, the County shall conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis. Document facilities inspected, number of inspections, follow up inspections, enforcement actions, the maintenance inspection schedules, and any other relevant information shall be submitted in the County's annual reports. Implement the stormwater management design policies, principles, methods, and practices found in the *2000 Maryland Stormwater Design Manual* or other innovative stormwater management technologies approved by MDE.

- Observation 1: The County tracks the total number of stormwater management facilities (Total SWMFs) inspected in an Access database. Also, using the database, the County strategy is to assign one of 36 inspection cycles to each SWM facility, in order to conduct inspections on a triennial basis.
- Observation 2: The County has indicated that it is “current” regarding inspections of private storm water facilities (Private SWMFs). According to documentation provided by the County is on target for inspecting all (currently 1,743) Private SWMFs within a triennial cycle.
- Observation 3: Public stormwater management facilities (Public SWMFs) are those maintained by Howard County or the Howard County Public School System (HCPSS). At the time of the EPA MS4 Inspection, the County had not inspected 291 Public SWMFs within the past three years (page 9 of Exhibit 1, Exhibit 2, and Exhibit 3). According to documentation provided by the County for the inspection, the County has 1,042 Public SWMFs.

Documentation from Howard County cites personnel disruptions as reasons why the county did not inspect all the Public SWM Facilities in the past three years (Exhibit 3). At the time of the MS4 Inspection, documentation stated that the County is using funds from FY13 to hire consultants Charles P. Johnson & Associates (CPJ) to conduct inspections of all 291 Public SWM Facilities. A letter from CPJ to Howard County dated May 21, 2013, states that the targeted completion date of all backlogged inspections is September 1, 2013 (Exhibit 4). Howard County has since stated that the backlog has been eliminated (Exhibit 20)

In the Spring of 2013, the County Council approved a Howard County Watershed Protection Fee that will provide additional resources for stormwater management and environmental protection. The new fee will allow for doubling of the County inspection staff.



### **Part E.1.a – Stormwater Management Facility Inspections**

#### **Observation 3: (continued)**

Additionally, starting in early 2012, the County inspection staff has spent significant time working on the migration of our extensive BMP inspection database to a new platform, in order to improve integration of data and comply with changes in State and federal reporting requirements. The prior database was comprehensive and intricate, with many internal links, and including multiple sets of plans, red lines, inspection reports, photographs, options for creating follow up letters to BMP owners, and more.

The County also stated that a conversion to a new CRM database was extremely time consuming. This project also contributed the inspection backlog. The new database platform is anticipated to go on-line in October 2013.

- Observation 4: Howard County does not appear to have a program to conduct maintenance inspections of its approximately 1,632 residential micro-scale environmental site design (MS-ESD) best management practices (BMPs). In documentation provided by the county, the county states that the residential micro-scale ESD BMPs include “rain gardens, drywells, rain barrels, etc.” (Exhibit 3). Documentation also indicates that the county is developing a program to inspect the MS-ESD BMPs (Exhibit 3).
- Observation 5: A review of the Storm Water Pollution Prevention Plan Inspection Form records for Alpha Ridge Landfill dated March 15, 2013, indicate that sediment needed to be removed from the storm water management pond forebay (Exhibit 16). County inspection records provide three months to remove the sediment. Information provided after the EPA-led physical inspection indicated that sediment was removed from the forebay in April 2013, subsequent to the EPA field inspection (Appendix 4, Attachment 1).
- Observation 6: On April 15, 2013, the EPA inspection team visited Howard County’s Cooksville Vehicle Maintenance Shop located at 14212 Frederick Road in Cooksville, Maryland. This site has two stormwater outfalls. The EPA inspection team observed evidence of soil erosion and sediment deposition in both outfalls, one of which is shown in Photograph 17. Howard County staff stated that the erosion and sediment deposition was a result of grading and retro-fitting in February 2013 (including new rip rap in the swale and upgraded outfall structure ( Exhibit 20). Subsequent (on April 23, 2013) to the physical MS4 Inspection led by EPA Region 3, Howard County made repairs to the Cooksville stormwater pond, also shown in (Exhibit 20).

**Part E.2.a – Erosion and Sediment Control Program Improvements**

An acceptable erosion and sediment control program shall be maintained in accordance with the Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland. At a minimum, the County shall address any needed program improvements identified during MDE's evaluation of the County's application for the delegation of erosion and sediment control enforcement authority.

Observation 7: In 2012, MDE granted continued delegation of erosion and sediment control enforcement authority to Howard County. This delegation of authority is effective through June 30, 2015 (Exhibit 8).

The MDE 2011 Erosion and Sediment Control Program Evaluation (E&S Evaluation) identified that 26 of 41 active construction sites in Howard County to have violations of erosion and sediment control requirements. Upon re-inspection, 15 sites continued to be in violation. The high number of violations found during initial and follow-up inspections indicates that Howard County is experiencing difficulty using its delegated enforcement authority to administer an effective erosion and sediment control program. The E&S Evaluation concluded that Howard County needed to be more proactive when erosion and sediment control violations occur. More forceful procedures were recommended by the E&S Evaluation, including the issuance of fines when significant problems persist.

Howard County implemented program modifications that resolved some of the issues in response to the 2011 E&S Evaluation, but the following issues were identified in 2012 E&S Evaluation:

- Achieve timely stabilization of inactive or stockpile areas;
- Improve routine maintenance of stormwater traps and basins; and
- Ensure that the approved sequence of construction is strictly followed.

During the EPA inspection on April 15, 2013, Howard County explained that it was doing the following to address MDE's observations (see Exhibit 5):

- In order to address the need for more timely stabilization of inactive or stockpile areas, the county stated that it increased the number of enforcement actions in 2013 over 2012. It is unclear whether the enforcement actions were specific to unstabilized areas;

### **Part E.2.a – Erosion and Sediment Control Program Improvements**

#### **Observation 7: (continued)**

- In order to address the need for routine maintenance of stormwater traps and basins, the county stated that it updated the Inspectors Field Manual, giving inspectors the authority to make field modifications to stormwater traps and basins without approval from the Howard County Soil Conservation District, encouraged dewatering traps and stabilizing contributing dikes and swales, eliminated an older type of trap, and made the criteria for cleaning out traps and basins based on depth instead of volume; and
- In order to ensure that the approved sequence of construction is strictly followed, the county stated that it is now emphasizing reviewing the approved construction sequence at the pre-construction meeting.

#### Cypress Springs

The EPA inspection team visited the Cypress Springs construction site, a private construction activity, on April 15, 2013. The site was covered by two grading permits, one for the final road plan, F-10-028, and one for the site development plan, SDP-12-002. During the visit to Cypress Springs, the EPA inspection team observed erosion next to a dike leading to Stormwater Management Pond #1. The Curlex<sup>®</sup> matting lining the area was worn and erosion had occurred underneath and next to the matting (Appendix 5 - Photo Log, Photograph 1). The Howard County inspector noted the issue during the inspection conducted on April 15, 2013 (Exhibit 6). Additionally, sediment accumulation was present at the inlet to the pond (Appendix 5 - Photograph 2). During the onsite inspection, the EPA inspection team also observed an unstabilized, uncovered stockpile on Lot #9 (Photograph 3).

Additionally, the EPA inspection team observed slope failure near the easternmost edge of the site (Photograph 18) as well as rill erosion (Photograph 19). Also, downslope from the slope failure, a section of super silt fence was not fully entrenched and, on an adjacent section of super silt fence, sediment had accumulated above one-half of the super silt fence height (see Photograph 20). Sediment accumulation was also present along another section of super silt fence downslope from the slope failure. In addition debris was located on top of and outside of the super silt fence in this location (Photograph 21). The Howard County inspector stated that he did not always walk entire the perimeter of the site and had not been to the easternmost section of the site recently. Also, apparent concrete residue and oil staining was observed located on the roadway outside of construction entrance to lot #9. (Photograph 22).

### **Part E.2.a – Erosion and Sediment Control Program Improvements**

Observation 7: (continued)

#### Vista Ridge

EPA inspection team visited the Vista Ridge construction site, located at 14484 Frederick Road, Cooksville, Maryland, on April 15, 2013. The EPA inspection team observed unstabilized areas near the inlet to, and along the slopes, of Stormwater Management Facility #1 (Photograph 4). The Howard County inspector's April 15, 2013, inspection report did not note this issue (Exhibit 7). Additionally, the EPA inspection team observed multiple, unstabilized stockpiles (Photographs 5 through 8) while at the site. The Howard County inspector stated that the largest stockpile had been on site for approximately one month. The Howard County inspector's report dated April 15, 2013, states that the stockpiles are active. A subsequent photograph dated April 17, 2013, shows construction equipment working a stockpile (Exhibit 7).

### **Part E.3.d – Illicit Discharge Detection and Elimination Inspection and Enforcement**

Part E.3 of the MS4 permit states that Howard County shall maintain an inspection and enforcement program, or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer system that are not composed entirely of stormwater are either permitted by MDE or eliminated. Specifically, Part E.3.d of the Howard County MS4 permit states that inspection and enforcement program activities shall include using appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills.

Observation 8: Howard County has a program that inspects for illicit discharges and investigates illicit discharges.

Howard County had not confirmed elimination of the illicit discharge identified at Lancaster Foods (commercial facility). Howard County identified an illicit discharge at Lancaster Foods, located at 7700 Conowingo Avenue in Jessup, Maryland, in October 2012. However, it was not until April 2013 that steps to control eliminate the cause and monetary penalties were taken. On October 15, 2012, a routine inspection indicated the possibility of an illicit discharge into a stormwater pond located behind Lancaster Foods at Outfall P1000588 (Exhibit 8). Two subsequent inspections and field tests were conducted at the outfall into the stormwater pond on December 4 and 5, 2012, which again verified an illicit discharge had occurred (Exhibit 9 and 10). Subsequent investigation and dye testing within the Lancaster Foods facility to determine the source of the illicit discharge to the stormwater pond was conducted on February 6, 2013, which was inconclusive.

On February 15, 2013, an email from Lancaster Foods to Howard County indicated that wash water generated by night sanitation workers cleaning totes was the possible source of the illicit discharge (Exhibit 11).

#### **Part E.3.d – Illicit Discharge Detection and Elimination Inspection and Enforcement**

##### **Observation 8: (continued)**

During a follow up inspection of Outfall P1000588 on April 16, 2013, (Photograph 9) by Howard County, Versar, MDE, and the EPA inspection team, an illicit discharge was again suspected of entering the stormwater pond as a result of a low pH value (pH of the pond measured at 5.8 s.u.), the presence of detergents (Exhibit 12), and the presence of vegetable residue (see Photographs 10 and 11). Subsequent laboratory testing results of the discharge into the stormwater pond measured fecal coliform bacteria levels at 1,600 col/100mL (Exhibit 13).

Discussion with the Lancaster Foods on-site manager, Mr. Thomas Herod, on April 16, 2013, revealed that a significant sanitary sewer overflow (SSO) had occurred the day before the April 16<sup>th</sup> inspection. A portion of the overflowing sewage was discharged to a storm drain inlet (see Photograph 12) that conveyed the sewage to Outfall P1000588 and into the stormwater pond. Based on the information obtained from Lancaster Foods on April 16, 2013, regarding the cause of the periodic but on-going illicit discharges into the stormwater pond, Howard County's Department of Public Works, Bureau of Environmental Services issued both a letter and a citation, including a fine of \$750, to Lancaster Foods on May 23, 2013 (Exhibit 14 and 15).

#### **Part E.4 – County Property Management**

Howard County shall identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plan development and implementation shall be submitted annually.

The NPDES Permit Q.1. requires the permittee to have and implement a storm water pollution prevention plan and Q.2.b. ii. requires "Good Housekeeping".

The SWPP, under 5.3 SITE-SPECIFIC AND STRUCTURAL BMPs, identifies the USEPA Guidance, Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA 832-R-92-006 September 1992). provides guidance for choosing BMPs for the following items:

##### **Chapter 4 - SITE-SPECIFIC INDUSTRIAL STORM WATER BMPs**

###### **Curbing**

Like containment diking, curbing is a barrier that surrounds an area of concern. Curbing functions in a similar way to prevent spills, leaks, etc. from being released to the environment by routing runoff to treatment or control areas. The terms curbing and diking are sometimes used interchangeably.



### Covering

Covering is the partial or total physical enclosure of materials, equipment, process operations, or activities. Covering certain areas or activities prevents storm water from coming into contact with potential pollutants and reduces material loss from wind blowing. Tarpaulins, plastic sheeting, roofs, buildings, and other enclosures are examples of covering that are effective in preventing storm water contamination. Covering can be temporary or permanent.

#### Observation 9:

##### Alpha Ridge Landfill

On April 15, 2013, the EPA inspection team visited Howard County's Alpha Ridge Landfill (Alpha Ridge Landfill), located at 2350 Marriottsville Road in Marriottsville. The Alpha Ridge Landfill is one of 15 municipally-owned facilities covered under the NPDES Industrial Activities General Permit. The EPA inspection team observed the Howard County stormwater inspector conduct an inspection.

During the inspection, the current Stormwater Pollution Prevention Plan (SWPPP) and past self inspection reports were reviewed, and a site walk was conducted to verify that structural and non-structural BMPs were properly functioning to prevent stormwater pollution.

Based on observations during the inspection, wastes including paint, used motor oil, and refrigerants were exposed to precipitation at the Alpha Ridge Landfill. While most of the residential drop off area was under roof, some oil tanks were outside the bermed containment area and a dumpster containing spent oil containers was exposed to precipitation (Photograph 13).

The EPA inspection team also observed an open-top dumpster with several waste paint containers (Photograph 14) and several waste paint containers stored outside of secondary containment (Photograph 15).

The County explained that the situation was temporary as a result of collecting more paint during the spring collections event than the County has space to store properly. In addition, the EPA inspection team observed appliances such as air conditioners, refrigerators, and freezers (Photograph 16). According to landfill personnel, the appliances are not checked for mercury switches, and the appliances can remain at this location for up to one week.

### **Part I.2 – Program Funding**

Adequate program funding to comply with all conditions of the permit will be maintained.

#### Observation 10:

In late Spring of 2013, the County Council approved a Howard County Watershed Protection Fee that will provide significant additional resources for stormwater management and environmental protection.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Mr. Jay Sakai, Director  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

SEP 26 2012

Re: Specific Objection to Howard County Phase I Municipal Separate Storm Sewer System  
(MS4) Permit MD0068322

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Howard County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Howard County. However, MDE did not incorporate EPA's comments into the initial draft of the Howard County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Howard County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:



## I. Required Changes

### **1. Water Quality Standards**

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Howard County permit (Enforcement and Penalties) contains general language related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the Howard County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA’s objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

### **2. Industrial / Commercial Monitoring**

Part III.C of the draft Howard County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of “a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)...” 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA’s objection, MDE must revise the permit in accordance with those recommendations.

## II. Recommended Change

EPA also suggests the following recommendation for inclusion in the County's permit.

### Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

## III. Anticipated Changes

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Howard County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Howard County, EPA hereby reserves its right to renew its objection to such a draft permit.

### 1. Chesapeake Bay TMDL

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Howard County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Howard County permit.

### 2. Backsliding

EPA had previously expressed a concern that the Howard County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Howard County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Howard County permit.

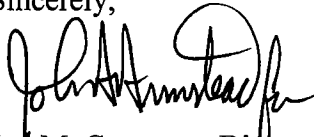
### **3. Maximum Extent Practicable**

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R §122.4(c), MDE may not issue the Howard County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa".

Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE  
Mark DeLuca, Howard County